S. HRG. 99-1010

NOMINATION OF JOHN AGRESTO

HEARINGS

BEFORE THE

COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

NOMINATION OF JOHN AGRESTO TO BE ARCHIVIST OF THE UNITED STATES

AUGUST 13 AND SEPTEMBER 9, 10, 1986

Printed for the use of the
Committee on Governmental Affairs

U.S. GOVERNMENT PRINTING OFFICE
65-150 O WASHINGTON : 1987

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

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NOMINATION OF JOHN AGRESTO

WEDNESDAY, AUGUST 13, 1986

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The committee met at 10:02 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Ted Stevens presiding.

Present: Senators Stevens, Durenberger, Cochran, Eagleton, Chiles, and Levin.

OPENING STATEMENT OF SENATOR STEVENS

Senator STEVENS. Good morning.

We are here to receive testimony from John Agresto, the nominee to be the first U.S. Archivist of the National Archives and Records Administration. We will hear witnesses who will both support and oppose this nomination.

The National Archives was established in 1934. In 1949, as a result of recommendations from the Little Hoover Commission, it was made part of the General Services Administration and remained within the GSA family until October 1984. In terms of the life of the National Archives and Records Administration, we will be making a little history today in taking the testimony of the President's nominee to be the first confirmed head of this agency.

Mr. Agresto comes to us with a background of political science and education and in promotion of the arts. He is not an archivist or a historian, although as an aside, I am not sure how one can be a competent political scientist without having a knowledge and appreciation of the history and the importance of the archival sciences.

Nevertheless, we will hear from those who feel that only an archivist or historian should be the head of this Government agency that will be responsible for maintaining our archives and, we hope, promoting the effective use and appreciation of our Nation's past.

I want to enter into the record letters of support for Mr. Agresto; one, in particular from John Voss, the executive officer of the American Academy of Arts and Sciences.[1]

Committee rules require that this committee conduct an inquiry into the nominee's experience, qualifications, integrity and suitability to serve in the position for which he or she has been nominated. I want to take the time now to very briefly recount the steps the committee has taken on this nomination prior to today.

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[1] The committee received numerous letters both in support of and in opposition to this nomination. The letters may be found in the committee files.

First, the nominee has been asked for and has cooperated in supplying financial statements and detailed information on education, employment, and professional achievements. He has responded in writing to all of the questions that have been submitted to him in accordance with our procedure for prehearing questions.

Copies of the biographical information and the prehearing questions and responses will be placed in the record as part of this hearing and will be available on request.[1] The financial statements are available for inspection by the public in the committee office.

The committee reviewed Mr. Agresto's biographical and financial information, as well as a report submitted by the Office of Government Ethics and the Ethics Official of the Archives.

Following that, the chairman of the committee, Senator Roth, has reviewed the FBI report prepared on Mr. Agresto, which has also been reviewed by our ranking Democratic member, Senator Eagleton.

I will be receiving some of the testimony here this morning. Other members of the committee will chair the hearing later this morning. In the beginning, I want to recognize my good friend, Senator Paul Simon, who will introduce Mr. Agresto.

TESTIMONY OF HON. PAUL SIMON, U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator SIMON. Mr. Chairman, I am pleased to be here. Let me just very briefly say that John Agresto is a magna cum laude graduate of Boston College, and a Ph.D. from Cornell University. He taught 8 years at the University of Toronto, Kenyon College, and Duke University. He was the projects director of the National Humanities Center in North Carolina, where I got to know him. He was an assistant then for Bill Bennett, who is now our Secretary of Education.

As acting chairman of the National Endowment for the Humanities, he has continued the peer panel system and, from everything I know, has done a superb job.

His philosophy in the role of the Archives is clear. Let me just read a couple of sentences here: "The principles of preservation and success belong to no partisan camp. Conservatives should, and I think they do, have an interest in preservation of our past and the records of our culture and the works that helped define our national character. On that level, preservation is surely a conservative act, but it is a highly liberal act, as well. Information and knowledge give us the wherewithal to think for ourselves to be free to come to our own conclusions." This quote is from John Agresto.

I would add two other points. I had some public clashes with Bill Bennett on his failure to comply with EEOC requirements when he was at NEH. I am pleased to see that John Agresto has complied with affirmative action requirements of the law, and I think that is to his credit.

Second, I recall when Daniel Boorstin was nominated to be Librarian of Congress, and the librarians in the country were up in arms. They said any local librarian in any community, in Alaska or Illinois or anywhere else, would make a better Librarian of Congress than Daniel Boorstin, who doesn't have the background.

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[1] See p. 118 for the biographical information and p. 135 for responses to prehearing questions.

Dan Boorstin has been an outstanding Librarian of Congress.

Senator STEVENS. You are reading my mind. I have the whole outline of that argument. [Laughter.]

Senator SIMON. As a parallel, I think John Agresto has the background, the ability and the basic stuff to do an outstanding job as our Archivist, and I have no hesitancy whatsoever in urging that he be approved.

That is my statement, Mr. Chairman.

Senator STEVENS. We thank you very much for your appearance.

Senator SIMON. I have Senator Hatch's statement, also I would like to enter that in the record.[1]

Senator STEVENS. I appreciate your taking the time to present your statement. I am sure that your personal endorsement will go a long way with this committee. So thank you very much.

Senator SIMON. Thank you.

Senator STEVENS. Mr. Agresto, the rules of this committee require that nominees be sworn. Is John Agresto your true name?

Mr. AGRESTO. Yes, it is, sir.

Senator STEVENS. Will your raise your hand, please? Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. AGRESTO. I do.

Senator STEVENS. Thank you very much. We are pleased to have you before us. Do you have a statement to be made?

Mr. AGRESTO. Yes, Senator, I do. There are copies of it at the door. It is a rather longish statement,[2] so I will only read part of it.

Senator STEVENS. All the statements of witnesses will be printed in full in the record, and we would hope that they would be summarized for the benefit of everyone concerned in terms of time.

TESTIMONY OF JOHN AGRESTO, NOMINEE TO BE ARCHIVIST OF THE UNITED STATES

Mr. AGRESTO. I am pleased and honored to be here today as the President's nominee to be Archivist of the United States. This is not simply an opportunity for me, but, I hope, the beginning of a new history for the Archives; the chance for that institution to carry out its rightful task of service to the Government, to scholars, and to the public, and to take its place as one of the great cultural and educational institutions in this country.

The committee has already been provided a copy of my résumé. Let me only note that I received my undergraduate degree from Boston College and my doctorate in political science from Cornell University. I've taught courses on the American Constitution, American political history, and political philosophy at the University of Toronto, Kenyon College, and at Duke University.

My scholarly work and teaching have centered around what Jefferson once called "the great texts of civic instruction," the documents and papers of the founding of this country and the meaning of the American experience.

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[1] See 311.

[2] See 101.

For the last 8 years I have been an administrator and public servant, both in private educational institutions and in Government. With my family, I came to Washington in 1982 to help head the National Endowment for the Humanities. I am exceedingly proud of our work and our accomplishments to date. Partly under my leadership, the NEH began what I think is the best program for the commemoration and the celebration of the bicentennial of the Constitution anywhere in this country.

We have supported the work in documentary editing on the great papers and texts of the founding, including the records of the Federal Convention. We have helped make available to everyone the writings of Americans from Jefferson to Jane Addams and Susan B. Anthony to Marcus Garvey, Booker T. Washington, and Martin Luther King.

Since I have been at NEH, we began a series of summer seminars for high school teachers every year.

We began a Travel to Collections Program to allow scholars to travel to archives and collections anywhere in the world. We began what I think is the best program directed at historically black colleges anywhere in this Government. We began a program for younger scholars, and just this past year, I started a program of Fellowships for College Teachers on the Foundations of American Society.

Because of my own personal interests in preservation and the overwhelming problems we face as a nation because of the deterioration of our documents, papers, and books, my first act as acting chairman was to announce the establishment of the office of preservation at the National Endowment for Humanities.

The sad fact is that today, many books will not outlast their readers. Through that office, we hope to do our share to help preserve the works of this country from silent, rapid deterioration and destruction.

Let me note that through this office of the NEH, we are now working with the Library of Congress in over half the States of the union to catalog and preserve all the newspapers published in America since the early 18th century.

We are also working with the Library of Congress on a film for television on conservation and preservation. We have helped develop a copying machine that will copy bound volumes without breaking the books' spines. We have supported the Nation's only graduate program on conservation training at Columbia University. And we have been working with the Council on Library Resources to microfilm those books and volumes now most in danger of disintegration.

In sum, under my leadership at NEH, we have helped train archivists, librarians, and administrators in preservation techniques, developed cooperative centers and planned for national approaches on the problems of preservation.

As acting chairman, I took the lead and announced two major initiatives and new directions for the NEH. The first is designed to help stop foreign language illiteracy in this country by promoting a new program called understanding other nations, and the second is an attempt to remedy the even more serious defect of ignorance about our own country.

In that regard, I began a major program entitled "Understanding America at the Endowment." Finally, in order to bring the best in the humanities to those people and students generally underserved by our programs, I set in motion a whole new endeaver called access to excellence, in hopes of making those great books and ideas and sources known and appreciated in every corner of American society.

At the NEH, I have done my utmost not only to transmit the legacy of civilization to students and scholars and the public, but to do it in such a way that the best may be available to all.

I have listed these efforts of mine because I would like to think, as the Archives and Shakespeare both proclaim, that the past is prologue; that the energies and accomplishments I have brought to one place may serve as models of what can be done in a new area.

I am a scholar of the American Constitution and the history of this country. I have worked to help preserve America's documentary heritage, and I have sought to give access to the works of this country and others to scholars and citizens at all levels. I think that is what the Archives needs today, as well.

The Archives is a national treasure, but its light all too often shines in secret. My overarching goal is to collect, preserve, protect and make available the greatness that that building contains.

In this regard, let me lay before this committee some general observations about the meaning and place of the Archives in American life.

As I once wrote in another context, "More than any other country, this Nation of ours lives on documents. We are not a Nation that lives by ancient prescriptions; we do not live in a country that evolved from dark and unspoken occurrences obscured by time. We trace our history as a people through documents: The Mayflower Compact, the broadsides of the colonial crisis, the Declaration of Independence, the Bill of Rights, the Emancipation Proclamation. Indeed, we have a document that proclaims itself a 'Constitution', a document that, through its own efficacy, 'constitutes' us as a people. We are held together by bonds of paper. We see ourselves and govern ourselves by the written word. In a true sense America is its documents, its family records, its business agreements, its naturalization papers, its Constitution, its letters to the editor."

I would hope, as Archivist, to help make it clear to Americans as best I can the greatness of their documentary heritage. I would hope to make the Archives not simply the repository of national papers, but a source of public information, public education, and public self-understanding. I will do my best to see to it that the Archives becomes not just a place of collection, but a focal point of distribution, as well.

The Archives has labored under severe liabilities in recent years. Before independence, they were a small and scorned part of the General Services Administration, submerged and shunted aside. Moreover, the archives labors under the problem of lack of space and deteriorating papers and texts.

But most of all, the Archives labors under the problem of obscurity. What independence promised the Archives was not simply that it could pursue its records management function more freely or that it would now work on computerization or micrographics or preservation with greater discretion.

What independence promised was the opportunity for the Archives finally to become what it can become: One of the major cultural institutions of American life. The whole history of this country is in that building. We now have the chance and the task of getting the history out. I envision that within the next 10 years, there will be three major national cultural institutions ringing the mall here in Washington: the Smithsonian, the Library of Congress and the National Archives.

Doing this will require hard work and imagination, and that, above all, is what I would promise this committee: My ideas and my work, because I think the Archives can be a national cultural and educational institution second to none in America.

Thank you.

Senator STEVENS. Thank you very much. Our rules also require that I ask you three specific questions which I would like to do so in the beginning.

Is there anything of which you are aware in your background which might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. AGRESTO. I signed the letter to Mr. David Martin, who is Director of the Office of Government Ethics, laying out those areas in which I would recuse myself where there could be any conceivable or possible conflict of interest.

I will recuse myself with regard to my wife's employer, the University of Toronto, Kenyon College, Cornell University, and the Smithsonian Institute, which is about to publish an article of mine. Aside from that, I know of no conflict of interest, and I will recuse myself in those areas.[1]

Senator STEVENS. Do you know of any reason, personal or otherwise, that would prevent you from fully and honorably discharging the duties of the office to which you have been nominated?

Mr. AGRESTO. No, sir, none.

Senator STEVENS. If you are confirmed, do you agree without reservation to appear and testify before any duly constituted committee of the Congress?

Mr. AGRESTO. Yes, sir, I do.

Senator STEVENS. Do you have family with you today?

Mr. AGRESTO. My wife is with me, Catherine, and I have two children, one of whom has seen me testify enough, she said, and the other is with her grandparents.

Senator STEVENS. Thank you. Thank you very much.

One of the requests that I have received from people in my State who, incidentally, are archivists, is to find out your feelings about making the records that are available in the Archives available to the areas of the country which these Federal records pertain to.

For instance, many of our areas, such as my State, have been or were territories for long periods of time, and their original records under the American flag are here in Washington in the Archives.

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[1] See 583.

Have you thought about the problem of establishing a program whereby these records could be made available either on a loan basis as the Smithsonian does, or the Library of Congress does, to various areas of the country so that they may be examined by the people in the area without traveling this considerable distance to Washington?

Mr. AGRESTO. I have given that some thought, and I, needless to say, would like to talk to professionals at the Archives for their views on it, as well. The Archives does have regional offices, regional archives, 11 of them around the country that, in fact, do collect and hold the documents that are produced in that area, everything from court records, through the branch offices of the Federal Government there.

Senator STEVENS. Those are current records. I am familiar with those.

Mr. AGRESTO. No, even—not only current records, but also historic material, as well, and the Archives does send out, does give to these branch offices some of the most important and most widely used of the records and holdings at the National Archives; things that help geneologists look up their histories, records of the Continental Congress, naturalization papers, and more.

But more directly, I certainly think that those papers and documents that are of particular interest, whether they be national documents or whether they be documents that are geographically centered, should be, if not in original, at least in copy available to people around the country.

Exactly what my plans are to be on this I can't right now say. But I do have some familiarity with that program, and some ideas.

Senator STEVENS. I am told you have written a book on the supreme court and constitutional democracy, and Dr. Cheney, who will be here soon, and I both are on the Commission on the Bicentennial of the Constitution. Could you tell us something about that book of yours? How did you happen to do that?

Mr. AGRESTO. That book actually started at a seminar that I went to, interestingly enough, that was held by the National Endowment for the Humanities. I subsequently gave it as a paper at the American Political Science Association convention. It then became an article I published in the Georgia Law Review, and then it grew into a book. Basically, it is a book on the history and role of the Supreme Court in American life, the growth of the judicial power of the court, and judicial-Congressional interaction over the years. In it I try to answer the question, as well as I can, of the role and purpose of the court in American life.

Senator STEVENS. Have you done anything else in the area of review of the writing of the Constitution?

Mr. AGRESTO. I gave to the committee a binder about 6 inches high with every paper that I have written, all the articles that I have done, in fact, all the speeches that I have given of which I have copies. About half of them, I would say, are on American constitutional or historical issues. Yes, I have numbers of articles on American history.

Senator STEVENS. I am one who believes we should get right into the meat of the coconut on things like this. One of the complaints that we have had presented to the committee before your appearance was that you were denited tenure at Kenyon. Is that true? And what are the circumstances concerning that allegation?

Mr. **Agresto**. That actually is true, Senator. I taught at the University of Toronto, and then I taught for 6 years at Kenyon College. In fact, if you look at my résumé, you will see, despite what people say about the value of teaching, publish or perish is surely a rule.

And if you look at my résumé, you will see I wrote three books and many articles, all of them dating from the time I left Kenyon. While at Kenyon I devoted all my energy to teaching instead of writing. I discovered writing late in life.

After I left Kenyon, I did what I take to be the ideal of people who, do, in fact, have tenure: I went and became a scholar at the National Humanities Center, then became an administrator of the Humanities Center. I then became an adjunct associate professor at Duke University, hardly a step down. Not too long ago, Kenyon asked me to come back and give the all-campus lecture, hardly something they have let anyone else do to whom they have not given tenure.

In some ways, my experience has benefited from that. In fact, I wish Senator Glenn were here. I think he has letters he will share with the committee from the president and others at Kenyon.

Senator **Stevens**. We will be looking forward to getting that. We are going to hear charges that you are not an archivist, you are not a historian, and that you are too political. Why don't you give us your point of view on those arguments before we hear them.

Mr. **Agresto**. Yes, sir, I would be happy to. It is true. I am not technically an archivist, and I have no doubt that a person trained in archival science, a person trained in library science, a person trained in history would make a fine archivist of the United States. I have no principled disagreement whatsoever with those archival societies, that they would like to see an archivist proper as head of the National Archives.

Senator **Stevens**. Senator Durenberger will go make a roll call vote, and then he will come back and chair while I make a roll call vote.

Mr. **Agresto**. Shall I continue?

Senator **Stevens**. Yes, please. I apologize for the interruption.

Mr. **Agresto**. As I was saying, I have no principled objections to those people who are in the archival community and archival societies who would hope to see an archivist proper as head of the Archives, but I do think that is, in some ways, a narrow view. The duties of the Archivist surely go beyond accessioning and cataloguing and indexing on a day-to-day basis.

In fact, recently I was reading in a book on the Archives that the first Archivist of the United States, Professor Connor, used to refer to himself as an "amateur archivist." He was a professor at the University of North Carolina and not an archivist.

What the Archives needs is a person to represent the Archives, to represent the material that is in it, to make sense of the history that is in that Archives to the American people, to make the texts and the documents there regularly available, to work with Federal agencies and work with Congress, to worry about access to sensitive materials, and I think in that area, I have an edge.

I am a scholar of the American Constitution. I spent two decades teaching, writing, talking about the founding documents and the history of this country. I think that I can bring great strengths, administrative, scholarly, and academic. I don't think you need to be an archivist to head the Archives any more than Dan Boorstin needed to be a librarian to head the Library of Congress.

Senator STEVENS. We are going to hear a grat deal about Dan Boorstin, so I think we ought to make sure the record is there. In 1975, Dr. Boorstin was opposed by the American Library Association; by many independent libraries; by the Congressional Black Caucus; the Capital Area Council of Federal Employees; the American Federation of Government, County and Municipal Employees; the Greater Washington Central Labor Council; the AFL-CIO; the Black Employees of the Labor of Congress; the Library Founders Professional Association; the Ethnic Employees of the Labor of Congress' and the library of Congress Employees Union.

They all testified here against him at his hearing. The American Library Association said he lacked proven administrative skills. He had never managed even the smallest library; he lacked professional experience at a library, had no librarian training; he used the staff of the Smithsonian to help him with his research; that he was unable to act as a spokesman for the Library because he was not a librarian, and he would fail as the Librarian of Congress.

I think we are hearing the same litany again. Dr. Boorstin has become internationally known as the Librarian of Congress and has distinguished himself. We hope that if you are confirmed, you will do the same thing.

I want to ask you about the EEOC matter, however. I am told that before you became the Acting Chairman of NEH, Mr. Bennett decided to follow the lead of William French Smith and then of Edwin Meese and not file the affirmative action goals and time tables as requested by the EEOC. I do understand that you filed those this year. Can you tell us the background of the change in policy?

Mr. AGRESTO. Everything you said is true. Let me see if I can fill in the history a bit. Mr. Bennett had written a book called "Counting by Race," a book in which I am in agreement, where he raised serious questions about propriety of goals, quotas, timetables, so on. When I came shortly after he did to the National Endowment for the Humanities, when we came, we, the first year, filed goals and timetables as a matter of course. And then in 1983, William French Smith, who was then Attorney General, said that the office of Equal Employment Opportunity had exceeded its authority in requesting goals and timetables, and that the Justice Department would not file.

Since this was our sentiment as well, we consulted with our own lawyer at the National Endowment for the Humanities, who said that the Department of Justice was surely correct, that no agency was bound to file goals and timetables under that management request, and so we decided in 1984 not to file the goals and timetables.

There were a number of hearings on that. We stood by that, and we did not file. In 1985, however, our reauthorization legislation directed us in language that was quite clear that the Congress wished us to follow all directives of the Equal Employment Opportunity Commission. So in January of this year, I did so file.

I would not wish this committee to think that anything other than the National Endowment for the Humanities has one of the best records in hiring and promoting for minorities and women of any agency in this Federal Government.

Senator **Stevens**. You will have to stand at ease here until Senator Durenberger returns.

[Short recess.]

Senator **Durenberger** [presiding]. The hearing will come to order.

I understand from the chair that as he was leaving, the nominee was replying to a question which I have not heard. So I will leave it to the nominee to pick up where he left off.

Mr. **Agresto**. It was a question about the National Endowment's compliance with EEOC timetables. Briefly, the National Endowment for the Humanities did, for a few years, not comply with the goals and timetables of the EEOC. In the beginning of this year, however, I did comply. I will continue to comply at the Archives, as Senator Simon said in testimony before.

Where I left off was saying that I wouldn't want anyone to think that there has been a hint of discrimination at the National Endowment for the Humanities. Not only do we have what I think is the best recruiting program in Government, we advertise for all professional openings at all historically black colleges and universities; we target announcements of our openings in minority magazines and women's journals and so on. Women comprise, in fact, 69 percent of all the positions at the Endowment. And 50 percent or more of the professional positions at the Endowment are held by women. That is compared to 18 percent Governmentwide.

Ten percent of the staff positions at grade 14 and 15 are held by black women, and that is 10 times the Government average. In fact, when I came to the National Endowment for Humanities, there was six divisions; one of them was headed by a woman. There are now five divisions; three of them are headed by women.

I must say we did this without laying out goals and timetables; without saying to anyone that we would judge individuals on the basis of their race or sex. Because of wide recruitment and because of fair selection, the best have, in fact, been hired and are doing great.

But when, in fact, the legislation so said we should follow those timetables, we did.

Senator **Durenberger**. Thank you. Let me make a personal observation at this point. I am not as familiar as the chair with the requirements for this position. But I am somewhat familiar with the National Association of Historians and the Organization of American Historians because I have worked quite closely with them on the Intelligence Committee.

Recently, Bill Casey, who is one of the premier historians in this country, in addition to all his better known talent, made a nice speech in which he complimented me and the others of us who are asssociated with the Organization of American Historians on the work that we have done to free up some of the records in the intelligence community in a way in which they can be used by the public.

I guess my familiarity with you and your suitability for this position is somewhat second hand. However, I have a batch of letters which I will present to you for purposes of acknowledgment or reaction so that I might be comfortable with my vote. Until today, I had not received any mail from my constituents on your appointment, but I have quite a batch from people in colleges and universities and other places, for whom I have a great deal of professional respect, who raise questions about the suitability of your background. They do not challenge you personally, rather they question the suitability of your background and experience for a position which is a permanent appointment.

I have usually reacted to these kinds of letters by saying that I don't interpret the advice and consent part of my job as meaning that the President literally asks my advice and then has to take it in some form.

So I have not been very popular in my State, because of my vote for the President on Dan Manion and a few others. I don't expect, if and when I vote for you, Mr. Agresto, to be popular with the archivists in my State, and I am sort of curious as to why that might be the case.

Mr. **Agresto**. The question actually came up slightly more restrictedly from Senator Stevens when he asked me why the archivists had not been supportive. I must say, the archival societies may not have appreciated my nomination, but particular archivists have, in fact, written letters to me—perhaps also to you—that are supportive.

Particularly historians have also written on my behalf; in fact, a good number of them.

Senator **Durenberger**. If you have answered this question——

Mr. **Agresto**. The question from Senator Stevens was only on the archival part. As I said to him, I had no disagreement in principle with those archival societies who would like one of their own to be head of the Archives, just as the librarians wanted one of their own to head the Library of Congress.

I think the person chosen to head the Archives needs more than technical archival training or experience, that the person needs, and I think I can bring to the job, administrative experience, the ability to work with, and the experience in working with, American national documents, American national history, the history of this country. I resist the characterization of me by some historians that I am not, because my Ph.D. is in political science and not in history, that therefore I'm not suited to be head of the Archives.

Political scientists are major users of the National Archives, not only here, at the National Archives here, but at our Presidential libraries everywhere. Richard Neustadt and others could not do work in political science without the work of the Archives. I know many of the archivists at the Archives have their degrees in political science.

I think that this is a silly turf fight that goes on between political scientists and historians that I don't want to get into and I hope you don't want to get into either.

Senator DURENBERGER. Several of the letters have indicated the law requires a nonpolitical appointment to the position of Archivist. Do you believe that meets the mandate?

Mr. AGRESTO. I absolutely believe it meets the mandate. In fact, I was comforted by the fact that both Senators Hatch and Simon introduced me today. That may characterize me as bipartisan. I want to go further and characterize myself as simply nonpartisan. I have a record that is up for examination. The staff of this committee has looked at it. I have been at the National Endowment for the Humanities for 4 years. The record of the attempt and the achievement in putting together a nonpartisan program, nonpolitical program is there, and I would stand on that record.

Senator DURENBERGER. I'm referring to the background in your bio, financial information, et cetera. I don't remember the exact question, but under political affiliations and activities, it says "none, none and cheapskate." [Laughter.]

Mr. AGRESTO. Sorry. [Laughter.]

Senator DURENBERGER. You haven't made a contribution bigger than $50 to anybody. One year you made a total of $15. [Laughter.]

Mr. AGRESTO. Sorry. [Laughter.]

Senator DURENBERGER. Are your responses there an accurate representation of the totality of your partisanship, that is, minor financial contributions to Republican parties?

Mr. AGRESTO. Minor contributions, financial contributions to the Republican Party. I was about to write a check to a Democrat I know who is running for Congress. But I haven't written it yet, so it doesn't appear there.

But in terms of financial contributions, up to that date, that is exactly correct, and again, in terms of nonpartisanship, when I came to the National Endowment for the Humanities, one of the first things we did—because we deal in matters of education and culture and the intellect and we have about 8,000 grant proposals coming in every year—was to say that we are not in the business of funding partisan programs. The last thing we want to do is to be accused of being partisan or political. If anything would kill an agency like that, it would be to make it a tool of a party or ideology.

One thing we indicated from the beginning is that it would be unacceptable for a proposal to take a political or ideological side and use Federal money to promote it. Some people might have thought that that's a political position in itself but I think I can defend that as being wholly appropriate in this Government.

Senator DURENBERGER. Let me move from political to somewhere between the ideological or philosophical. I would like to ask you a question that relates to your sense of national purpose.

Ever since 1981, I have had the feeling that we are somehow, as a society, redefining national purpose. My particular preference is to celebrate the Constitutional Bicentennial with sort of a reexamination of national purposes rather than just shooting off fireworks, making Thomas Jefferson speeches, having all ships sale up whatever rivers go through Philadelphia, et cetera.

So that is my bias. I have a deep concern, though, as I watched early rhetoric on the National Endowment for the Arts, the National Endowment for the Humanities, the Corporation for Public

Broadcasting. and other similar groups that there is a notion among those who have responsibility for carrying out public policy in this country that devolution of responsibility for certain accepted national purposes was appropriate; that we ought to minimize the role of the National Government in the arts; that we ought to minimize the role of the National Government in the humanities, in education, in maybe history and historical publications and records; in fact, the whole archival function.

I think you know the direction in which I am heading. I assume that among national purposes, in addition to defense and currency, which we don't do a very good job of, that there are certain built-in cultural purposes for which we organize ourselves as government. I say cultural in the sense that it is intergenerational; that if we totally devolve to the individual or to mini parts of our society, the preservation of our heritage, we aren't going to have much here in times of financial crises. That is one of the reasons why I found in Bill Casey the right kind of spirit. While on one hand, he is keeping all the secrets, on the other hand, he is recognizing that there is a value to future generations in knowing how we made a decision.

What is your view in this area of your job, the permanent appointment, as it relates to the role of the National Government?

Mr. AGRESTO. I don't think there is any question—and I had some of this in my opening remarks—any question but of the extraordinary value, national value, intergenerational value, cultural and historical value of the Archives. That Archives, and the health of that Archives, is in some ways almost the same as the health of this country.

When we turn to the National Endowment for the Humanities, I think the record there is clear, as well. We have never made the case that all culture would decline and go down the tubes if the National Endowment for the Humanities had a budget cut. We have never made that kind of an argument.

But we have made the argument that the National Endowment for the Humanities is a small but effective part of the cultural inheritance of this country. We run a peer review system there that really does seem to pull out the very best in projects and proposals, public and scholarly and educational, and we fund those. I must say, we have devoted a good deal of our attention to helping projects raise funds from the private sector so that the Government may take the lead, but that business, private industry, and private foundation have an interest in culture and the humanities, as well.

We have done a number of things at once. I really am proud of the successes we have had with matching money in getting the private sector interested in culture.

Senator DURENBERGER. I think I am going to have to recess the committee because this vote ends in 15 minutes. I appreciate your responses. I have about seven other questions that I need to submit to you, and I would very much appreciate the same candor in your responses to those questions.

Mr. AGRESTO. Thank you, Senator.

Senator DURENBERGER. Thank you.

[Short recess.]

Senator STEVENS [presiding]. Thank you very much. We may have to be calling you at a later time. I might as well state right now, because of the conflicts on the floor, this hearing cannot continue beyond 12 today. So that we will have to schedule a second part of this hearing after the recess in September. We will get to it. We have already discussed it with other members of the committee. We will see to the best of our ability that it is done, and also, we will get to this nomination. You will just have to trust us. We may have to call you back. We will see if other members will submit their questions in writing. If they will, then we will not have to do that. If we cannot do that, we will have to have a second hearing. Thank you very much.

Mr. AGRESTO. Thank you, Senator.

Senator STEVENS. The next witness is a good friend, Dr. Cheney.

TESTIMONY OF LYNNE CHENEY, CHAIRMAN, NATIONAL ENDOWMENT FOR THE HUMANITIES [1]

Ms. CHENEY. Thank you, Senator Stevens. I very much appreciate the committee allowing me to come here today and testify on behalf of John Agresto. Although I have known Mr. Agresto only a short time, those few months have been spent working with him at the National Endowment for the Humanities, and on the basis of that experience, I would strongly urge that the Senate confirm him to be Archivist of the United States.

I became Chairman of the National Endowment for the Humanities last May. Mr. Agresto had been Acting Chairman for more than a year before I was sworn in, and before that, he had for several years been the number two person at the agency. In other words, when I arrived at NEH, an innocent as to its inner workings, Mr. Agresto, wise in its ways, became my deputy.

Now, this is not the easiest human situation in the world, to have the novice supplanting and subordinating the veteran administrator, but Mr. Agresto made it work, and he did so with grace, intelligence, and unfailing good humor.

The transition to my chairmanship was made all the easier because the Endowment, when I arrived, was operating efficently. The staff people there were working hard and enjoying their work. These things do not, of course, happen by accident. They are testimony to the skill with which Mr. Agresto had been managing the Agency and to the fact that he had not contented himself with merely being a caretaker.

He undertook several initiatives and projects during the time he was Acting Chairman, including one called Access to Excellence. The point of this project is for the Endowment to reach out, to find ways to reach out to minorities and to people in inner cities and rural areas, to groups who might not have had as much opportunity as others to benefit from our programs.

I recommend John Agresto to you not just because he is a skilled and imaginative administrator, but because he is a man of moral seriousness who has thought long and deeply about the history of this country. I keep a notebook in which I copy passages that strike me as particularly insightful or well written. It's not easy to get into my notebook. James Madison is in there, and Herman Melville, and Teddy Roosevelt, and T.S. Eliot, and John Agresto is in there.

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[1] See p. 220 for Ms. Cheney's prepared statement.

Let me read you the passage of John's that I've copied into my book. It's from a piece he wrote called "Lincoln, Statesmanship and the Humanities." The passage reads as follows:

> By an inseperable mixture of accident and inexorable destiny, Lincoln became President. The man who had taught himself Shakespeare and Euclid now ruled. It was, in one sense, a philosophic rule. His insights gave us back the reasons for existence. Through him we saw why this Nation was "that last, best hope of Earth" that last chance, as Lincoln said, "for all people of all colors everywhere" to have the burdens lifted from their shoulders. Through his mind, we have learned that the question was not, Can free democracies be established? but rather, Can they endure?

That is the end of the quotation that I have copied in my notebook. I think if you listen to it and think about it, you will see that is not casual scholarship; it is not cold scholarship. It shows a man thinking deeply about the history of this country in terms of enduring human values. Nor is the scholarship at which Mr. Agresto excels an exclusive kind. Clearly reasoned and plainly written, it is easily accessible, exactly the kind of learning, it seems to me, we should demand from the National Archivist.

Again, let me recommend him to you. He was a splendid choice on President Reagan's part, and if you confirm him, he will be an outstanding Archivist.

Senator STEVENS. Thank you very much, Dr. Cheney, for taking the time to come. I know you have had a unique experience with Mr. Agresto, and that makes it even more important that you come forward. Thank you.

Senator Eagleton, do you have any questions?

Senator EAGLETON. Yes, I have one question for Ms. Cheney. We welcome you to the hearing, Ms. Cheney. I am sorry I wasn't here for the very outset of your testimony, but I heard the great portions thereof. Let me quote you a portion of the law that set up the position of Archivist and the Archives as an independent agency. And then let me quote you a section from the conference report dealing with the Office of Archivist and then ask your opinion as to whether Mr. Agresto qualifies for the office under both the law and the language of the conference report.

Public Law 98-497, that is the law that set up Archives as an independent agency, and I take great pride in the fact that that was my bill, reads as follows: "The Archivist shall be appointed without regard to political affiliations and solely on the basis of the professional qualifications required to perform the duties and responsibilities of the Office of Archivist,"—from the statute.

Then the conference report, interpreting the law, and that is permissible around here, says as follows: "The conferees intend that the Archivist be an officer performing professional archival and records management functions insulated from the political orientation of a particular administration."

Now, the words I want to focus on are in the statute: "The Archivist shall be appointed solely on the basis of professional qualifications required to perform the duties and responsibilities," and the conference report, "an officer performing professional archival and records management functions."

I know you are here to support the nomination of Mr. Agresto, and that is fitting and proper. In your opinion, does he qualify for this position under the words of both the statute and the conference report? Is he a professional in archival and records management functions? Is he, in essence, an archivist?

Ms. Chaney. His training is as a political scientist. I heard Mr. Agresto testify quite eloquently, though, a few minutes ago about the fact that the position of National Archivist requires more than narrow archival knowledge. It certainly is clear to me why those people who have trained solely in archival matters would be interested in having one of their own in this particular position, just as—and it is not the first time a parallel has been drawn in this hearing—just as professional librarians were interested in having a professional librarian become Librarian of Congress.

It does seem to me, though, that Mr. Agresto, as a scholar, has the basic archival knowledge necessary for this job. In fact, his reach extends beyond that into an understanding of history and government, and particularly of the Constitution, that will make him serve as an outstanding Archivist.

There was a section of the statute in the law you mentioned that I also think deserves attention that has to do with "without regard for political affiliation". I began my testimony by saying I had only known Mr. Agresto a short time, but it had been in 2 months where we have worked together at the National Endowment for Humanities. In that time, I have been struck time and again by the political disinterestedness that goes into making decisions at the Endowment; the peer review process through which applications come into the Endowment; the deliberations in the national council for the National Endowment for the Humanities all deal with substance. These were procedures that had been set in place before I got there. Mr. Agresto most recently managed them, and their nonpartisanship impresses me greatly.

Senator Eagleton. That is fine. I wasn't focusing on the political words, although I did quote them just to make sure the sentence was complete from the statute. Could I urge you to correct one word of your testimony, and then as far as I am concerned, I will be satisfied with it. You said, in response to my question, you used the phrase "narrow archival knowledge." In your opinion, an archivist would be perfectly qualified, would he not, to serve as the Archivist of the United States?

Ms. Cheney. That's correct. What I heard—and perhaps I misheard—was your focus on archival skills, and I do think the skilled training is——

Senator Eagleton. I was quoting the conference committee report saying, "officer performing professional archival and records management functions." If one were a professionally trained and experienced archivist, wouldn't it go without saying that that person would, on a qualification basis, be qualified to be the Archivist of the United States?

Ms. Cheney. Absolutely, absolutely.

Senator Eagleton. A librarian, a professionally skilled and trained and experienced librarian, say, the librarian of New York

City, who didn't start out as a librarian, but who acquired great skills as a librarian, he would be qualified to be head of the Library of Congress, would he not?

Ms. CHENEY. Indeed. And I think Mr. Agresto qualifies to be Archivist.

Senator EAGLETON. It sounds like I am nitpicking, but I am quarreling with you about the use of the word "narrow". I think if one is trained as an archivist, has experience as an archivist, has functioned in that capacity throughout many years in different positions and what-have-you, then that person would be, on a qualification basis, qualified to be considered for the position of Archivist.

Ms. CHENEY. Certainly.

Senator EAGLETON. Thank you very much.

Mr. Chairman, I am sorry I was late. I gather Mr. Agresto finished his testimony.

Senator STEVENS. We would be happy to recall him.

Senator EAGLETON. All right. Can we call him now? Can I ask this on behalf of Senator Mathias? He would like to ask questions. He cannot be here. He would like to ask that Mr. Agresto be called back after the recess and that a series of three panels that is on our type written sheet, the top name is George Hobt, that all of those witnesses come back after the recess on a certain date along with Mr. Agresto so he could ask questions of that group.

Senator STEVENS. I discussed that with Senator Mathias, and he didn't leave me with the impression that all of those should be here at the second hearing, that we could take the ones that we could not get to today. He wanted to be here to hear some of them testify, but I didn't understand that he wanted to be here to hear all of them testify.

We will clarify that.

Senator EAGLETON. Can we clarify that in the interim, and can we nail down that Mr. Agresto will be back after the recess to answer Senator Mathias' questions?

Senator STEVENS. Senator Mathias only.

Senator EAGLETON. Senator Mathias only.

Senator STEVENS. Only, yes, and other members who have not made a specific request would submit their questions.

Senator EAGLETON. Senator Levin has questions of Mr. Agresto, and he will ask his today.

Senator STEVENS. Senator Levin is on his way now.

Senator EAGLETON. I will ask the staff to find out which witnesses on the second sheet, the back sheet, Senator Mathias would like to have return after the recess.

Senator STEVENS. All right. Senator Levin said he was on his way and specifically asked that Mr. Agresto wait for questions today.

Dr. Cheney, I just want to tell you before you leave that I heard the questions my good friend—and he is my good friend—ask you. I want you to know that from this Senator's point of view, just because a person is an archivist doesn't mean he is necessarily qualified to be the Archivist of the United States. There are other qualifications beyond being an archivist that are equally important.

Senator EAGLETON. Would my good friend—and he is my good friend. [Laughter.]

Would he admit if he was an archivist, he would not be disqualified?

Senator **Stevens**. That is right, he would not be disqualified, but that does not mean he would be totally qualified.

Senator **Eagleton**. That is really big of the chairman. [Laughter.]

All right, Mr. Agresto, can we start off where I was having my exchange with Ms. Cheney? I will read, just so it is clear for the record, a portion of both the statute and the conference report and get your comments on them.

"The Archivist shall be appointed solely on the basis of the professional qualifications required to perform the duties and responsibilities of the office of Archivist."

That is the statute, and then the conference report says, "The Conferees intend that the Archivist be an officer performing professional archival and records management functions." Then it goes on, something about politics.

The question has been raised and it will be raised again, I think, by subsequent witnesses. You are not a trained archivist; isn't that correct?

Mr. **Agresto**. That is correct.

Senator **Eagleton**. So the question is raised: Do you qualify under both the statute and the conference report language that refers to professional archival and records management functions?

Mr. **Agresto**. Yes, I do, and let me see if I can put it in the following way: This came up at the very, very beginning of the hearing, and I began by saying, let me get on the record, I do think it is absolutely correct. I do think an archivist could be Archivist of the United States. I also think historians could be the Archivist of the United States. I think a librarian could be Archivist of the United States. I think a political scientist could be Archivist. I think the head of a major educational foundation could be Archivist of the United States.

The section you quoted said, "to perform the duties of the Office of Archivist." But the duties of the Office of Archivist are broad, wide-ranging, and very deep. It requires more than just cataloging and accessions and filing skills. It requires more than just records management skills. Absolutely, no doubt, I will perform those functions.

But the duties of the Archivist of the United States include insular, internal obligations. But they have far and wide-ranging external obligations, as well. The Archivist, as I said to Senator Stevens before, the Archivist has to represent the Archives, gets to represent the material that is in those archives, he must help make sense of the history in the archives to the American people. He has to make those texts and documents available. He has to work with Federal agencies. He has to work with budgets. He has to worry about access to sensitive materials.

I would make the claim, Senator, that an archivist, a librarian, historian, a political scientist who has these kinds of knowledge and interests at heart, and the ability to do it, that all of them could be Archivist of the United States. I even made mention of the fact that the first person who was Archivist of the United States, appointed by Franklin Roosevelt, called himself an "amateur archivist", he was a professor of history at North Carolina. The person called the Godfather of the Archives, the person who took notes at the Continental Congress, was a merchant.

Senator **EAGLETON**. Let me ask, in your opinion, would the following people qualify to be Archivist, the Archivist of the United States: Dr. Giamatti, who is heading Yale, going into a more honest profession, baseball—[Laughter.]—if he were not available to be President of the National League, if Giamatti, an 8- or 10-year president of Yale University, professor of English, would he be qualified to be the Archivist of the United States, all other things being satisfactory in terms of the financial records, et cetera? But he served as head of Yale for 8 or 10 years, I forget what it was, a distinguished professor of English literature. Yale has a large archival collection of all sorts in print, photographs, paint, what-have-you. Would his qualifications be satisfactory to serve as Archivist of the United States?

Mr. **AGRESTO**. I would ask quite a few minor questions about his knowlegde of the records that were in that building, of his relationship to the history of this country, to the culture of this country and the documentary evidence of this country and, if satisfied with that answer, I would have no hesitation of confirming him.

Senator **EAGLETON**. Boorstin is the Librarian of Congress. He is a historian. A flap was raised when he was nominated several years ago to be the Librarian and he wasn't "a librarian." Mr. Boorstin has within his jurisdiction a large archival collection, staggering proportions. Suppose he wanted to switch jobs and were up for Archivist of the United States? Would he be qualified for consideration?

Mr. **AGRESTO**. He would be absolutely qualified.

Senator **EAGLETON**. Mr. Gregorian was the provost at the University of Pennsylvania. I am not sure what his academic field was, but he is now the librarian of the city of New York, and is very celebrated in that position. He has been there about 3, 4, or 5 years, but he is not an archivist by academic training or experience. The City Library of New York has an enormous archival collection. Would Mr. Gregorian be qualified to be the Archivist of the United States?

Mr. **AGRESTO**. Without question.

Senator **EAGLETON**. Thomas Jefferson, if we could resurrect him, had perhaps the first large archival collection in the United States. He was not trained as an archivist. He was a lawyer and many other things. If we could bring him back to life, and say, "Mr. Jefferson, with your interest, and knowledge of books, documents and what-have-you," some of which he wrote, so we know he will take tender loving care of them, "would you be the Archivist of the United States? Would he be qualified as Archivist of the United States?

Mr. **AGRESTO**. Yes, he would.

Senator **EAGLETON**. There are four, you can add some more, either living or dead, preeminent public figures of great prestige, knowledge, and respect, none of whom have the pedigee "archivist", but all of whom, at least in Mr. Agresto's opinion, as well as mine, would not be disbarred from serving as the Archivist of the United States.

In fact, if anyone took the position that any one of these four individuals couldn't be the Archivist of the United States, that position would be ludicrous, per se.

Imagine running around this town saying that Thomas Jefferson was fit to be almost everything else in the country but couldn't be the Archivist of the United States. Although, when we wrote the bill, when we wrote the law, we had in mind that this be the preeminent archival position in the country, which it is. There is nothing higher in the field.

We had in mind that it be the preeminent position in that field and that one have unique qualities in that person's background and experience that equip him or her to serve in that position.

What are the unique qualifies in your background that make you preeminently qualified for this, the most preeminent position in the world of archival endeavor?

Mr. AGRESTO. I thought the argument was going my way when I was—[Laughter.] I was put in the same category as Thomas Jefferson. Now I hesitate to compare myself to Thomas Jefferson.

Let me just make a stab at talking about my qualifications. I am a scholar of the American Constitution. I have studied greatly, taught, worked in the history and heritage of this country; given speeches; written books; written articles—from law journals to popular journals—on what this country means, especially in terms of the Constitution, the Federalist papers, and various documents of the American national experience.

Ms. Cheney was talking about the work I did on Abraham Lincoln. I consider myself a scholar of the American collection that is there at the Archivies, especially a constitutional scholar. I have been an administrator, both in the private sector and the public sector, of major educational and cultural organizations and institutions.

I was Deputy Chairman and Acting Chairman of the Endowment. I have worked with Congress. I have worked with budgets. I have worked at educational institutions. I have worked for the general public. My combinations of skills are in terms of my training and background, the administrative experience that I have had, and the scholarly academic and public work that I have done. That still doesn't put me in the category of Thomas Jefferson, I'm afraid. But you have my résumé, and I would be glad to speak on any part of it.

Senator EAGLETON. There is no doubt in my mind that you are a bright and talented person. There is no doubt in my mind that you are a distinguished scholar in political science. There is no doubt in my mind that you would be a distinguished professor in political science at any major university in the country. There is no doubt in my mind that you would be a distinguished head of a department in political science at any major university in the country, so I have no doubts on any of those scores.

But whatever foggy doubt I have pertains to the fact that what in your experience and/or training makes you qualified for this, the No. 1 archival position in the free world?

Mr. AGRESTO. The one thing I do best, Senator—and others will talk about my scholarship, the executive director of the Association of Political Scientists, and so on—the one thing I do best is to take the history of this country—and I mean to say this humbly—and make it understandable, knowable and exciting to students, to teachers and to the public.

The one thing that I discover that I am good at is that I can talk about what the history and heritage of this country is in ways that make people interested and in ways that make that material understandable. If I had to put down one thing I can do and will do as the Archivist, if I am confirmed, is I will work with that collection and work with teachers, with students, with the general public, and with the media to see to it that my understanding, our understanding of the greatness of that heritage becomes a public legacy.

That's what I want to put forward first. I can put forward my books, my law articles, you name it. That, I don't think is of the first importance. I can talk about the administrative experience as the head of a cultural agency. That is of some importance. What I do want to say first is I think I can interpret and explain the American experience broadly and widely, and I am also a good administrator.

Senator **Eagleton**. Is the Archivist the trained custodian of precious records and documents to be preserved for the ages, to be preserved for the use of scholars, or is the Archivist a classroom history teacher?

Mr. **Argrsto**. He is both, and he is more. He has to be a person who has respect for the professional staff and can work with the professional staff here at the Archives and see to it that the job of preservation, the job of cataloging, the job of accessioning is done and done right. He has to be a person who can deal with sensitive documents, sensitive equipment, sensitive relations with the Congress and the White House, and he has to be a person who can be a teacher.

Above all, he has to take that building, which is, as I said in my opening statement, obscure in the minds of the people in this country, even people who live in this city and make it part of the matrix of our cultural life. Sorry to say, the Archives tends to be a stop on the Metro station rather than a cultural and national treasure.

He has to be able to take what is there and make people understand that that history is their history. I would in no way slight the educational, the teaching aspects of what the Archivist has to do.

Senator **Eagleton**. Mr. Chairman, I will yield at this time to Senator Levin, and then I have some additional questions. I yield to him.

Senator **Stevens**. I would commend to my good friend the answers that Mr. Agresto has provided, the committee's prehearing questions and his responses under tab B in your book.

Senator Levin.

Senator **Eagleton**. Thank you very much. I will read them over the holiday.

Senator **Stevens**. Senator Levin.

Senator **Levin**. Thank you, Mr. Chairman. The Presidential Recordings and Materials Preservation Act requires the promulgation of regulations regarding the protection, preservation and availability of the Nixon papers. The act was ruled constitutional by the Supreme Court, and the authority under that act was transferred from the GAS to the newly independent Archives in 1984.

The regulations relative to those papers have now taken effect as of June 26, 1986, and according to those regulations the papers of President Nixon will begin to become available. Is it your intention to implement those regulations?

Mr. AGRESTO. I didn't meet with you before the meeting, but I did meet with some other Senators before this hearing, and the question came up at that time: what was my view of the OLC memorandum from the Justice Department, and what was my view on the releasing of the Nixon material.

I told the Senators that I met with my views on this matter from the very start. I even mentioned to Senator Glenn before it became a court case. I also said that in order to be absolutely clear and concise and to be on the record, I would have a statement on the Nixon papers, and if I could, I would like to read it.

In 1974, the Presidential Recordings and Material Act put control of the Nixon papers in the hands of the Archivist of the United States. This Act has been affirmed in substance by the United States Supreme Court and has been ready to take effect for over 12 years. To carry out this Act, the Archives entered a set of regulations, indeed, the sixth set of regulations so far. These are carefully drawn, fair and equitable regulations. They protect the privacy of the former President, our national security, and the public's right to know.

The regulations clearly give to the Archivist, in consultation with professional senior archival advisors, the authority to decide if a claim of privacy, right or privilege proposed by the former President is to be accepted.

In order to make certain that the Archivist's decision is fair and proper, the regulations give to Mr. Nixon the right to appeal any decision adverse to a claim of privilege in the District Court for the District of Columbia.

Given the number of competing claims involved, I cannot imagine a fairer set of regulations with more internal checks and balances than these.

However, the operation of these regulations was thrown into question by OMB on February 21, 1986, when OMB approved the regulations, but said that they should be "interpreted" in accordance with the Office of Legal Counsel Memorandum of February 18, 1986.

The problematic part of this memorandum is the statement that the Archivist should treat any claim of privilege that is asserted by the former President of the United States as conclusive. This conclusion was part of a larger argument that seemed to state that an incumbent President, indeed all future presidents, are bound to respect any and all claims of privilege asserted by former Presidents, even if the incumbent President disagrees with the assertion of the claim.

It would be improper for me to offer my own opinion of the constitutionality of the claim that former Presidents can bind sitting Presidents in the exercise of executive privilege. But I have said to Senators privately—and therefore I should also say publicly—that I find the interpretation of the Nixon regulations as outlined in the OLC memorandum to be at odds with the clear and obvious meaning of the regulations as written.

I am, as I am sure the Committee recognizes, in somewhat of a delicate situation in this matter. In almost every instance, independent agencies should do their best to accommodate the wishes, directives, and opinions of other agencies, and departments. But agencies also have the obligation to follow their own policies and regulations, especially in those instances when the regulations are clearly in line with legislative intent.

Second, I am constrained by the fact that this matter is currently before the courts. Needless to say, if I am confirmed, the Archives will abide by the decision of the courts in this matter. And I do not wish to put myself in the position of trying to direct or predict the judicial outcome. Nevertheless, I think it correct to say that the Archivist should view the OLC memorandum as strictly advisory. Former Presidents may assert and incumbent Presidents may adopt a claim of privilege by a former President. On that there is no disagreement. If the incumbent President is persuaded of the correctness of the claim or makes it his own, the Archivist should not look further. But, it is my opinion, if the assertion of privilege is not agreed to by the incumbent President, the Archivist should not be bound, either, and should follow the procedures clearly laid out in the regulations.

Barring any court decision to the contrary, if confirmed, I will go forward with the regulations as written as Congress intended.

Senator LEVIN. Have you had any discussions with the Justice Department as part of this process of selecting you, relative to the Nixon papers?

Mr. AGRESTO. Have I——

Senator LEVIN. Have you had any conversations with the Justice Department relative to the Nixon papers and how to handle them as part of this process of selecting you?

Mr. AGRESTO. No. I have had no conversations with the White House or the Justice Department on the Nixon papers at any time.

Senator LEVIN. Anybody else outside of the administration?

Mr. AGRESTO. No, not outside the administration. I have discussed it with my General Counsel at the Endowment and have gotten some good advice there. But I must say, I must have read the OLC memorandum 30 times, Senator. I have read over the hearings that were in the House. I have read the regulations I can't tell you how many times, and this is my conclusion that I have come to.

Senator LEVIN. Other than the General Counsel of your agency, have you had any discussions with anybody relative to how you would handle the Nixon papers?

Mr. AGRESTO. There are a number of people who will call me up and say, "Gee, I hope you release the Nixon papers," and I always say, "You will hear my statement."

I have discussed it with the Senators; I have discussed it with a number of people on the Senator's staff, and there are people at the agency who have read over the statement. Beyond that and my wife, no, no one knows this.

Senator STEVENS. Senator, if you would yield there, you haven't discussed it with me.

Mr. AGRESTO. No. You were the first Senator I met but we didn't discuss it. It didn't come up.

Senator STEVENS. I want to state my opinion very clearly. That is, the same policy would apply to President Carter's papers that apply to President Nixon's papers, and we are going to have some concept of the universality of the interpretation of these documents.

I don't think Mr. Carter's papers are in your custody. I don't see the very fact that you are the custodian of papers because of a Supreme Court order ought to change the concept for what is the release of past Presidents' papers.

Senator LEVIN. No. I agree. It should be subject to the same general principles.

Are you familiar with the resolution which the Governmental Affairs Committee adopted yesterday?

Mr. AGRESTO. I got a copy of it late last night or early this morning, and I think I am in consonance with that resolution.

Senator LEVIN. This is the resolution on the Nixon papers?

Mr. AGRESTO. Yes, on the Nixon papers, yes.

Senator LEVIN. The White House sent out a letter May 16, 1986, to a gentleman in Washington relative to your appointment which says the following:

> Please be assured that we are doing everything possible to assure that only the most highly qualified men and women who reflect and support the President's policies are appointed to positions of public trust in the Reagan administration.

Do you reflect and support the President's policies?

Mr. AGRESTO. I didn't get a copy of that letter but I did see that it was published, I take that to be simply White House boilerplate.

Senator LEVIN. So you haven't had any discussion with White House or Justice Department people?

Mr. AGRESTO. I met with the personnel office at the White House a number of times before my nomination came up, and we talked about everything from the Bicentennial Constitution to the preservation programs I started at NEH. At no time did the Nixon papers ever once come up.

Senator LEVIN. This isn't talking about the Nixon papers. This is talking about reflecting and supporting the President's policies.

Mr. AGRESTO. I think my policies are fairly clear, and in so far——

Senator LEVIN. Were you asked whether or not you reflect and support the President's policies by White House or other personnel people?

Mr. AGRESTO. They certainly know that I support the President's policies or, perhaps to put it oppositely, that the President's policies and mine are consonant on, for example, what the nature of a good education is; they know the work that I have done in humanities, the importance of scholarship; education, those kinds of things, I think they know that—I trust the President agrees with me on those.

Senator LEVIN. Mr. Chairman, I would ask unanimous consent that this letter from the Director of Presidential Personnel, Robert Tuttle, be made a part of the record. It is dated May 16th.

Senator STEVENS. I have no objection.

I should hope the President wouldn't send someone up here as a Presidential nominee that doesn't support his policies. I wouldn't vote for him.

Senator LEVIN. I understand this is supposed to be an independent office. This is a rather unusual statute that we have here. It is not like any other statute as far as I know, except for the inspector general statutes. The Archivist shall be appointed, according to our 1984 Act, without regard to political affiliations, solely on the basis of professional qualifications required to perform the duties and responsibility of the office.

Senator STEVENS. Nothing in that act says the President has to submit to us the name of a person who does not support his policies.

Senator LEVIN. That is correct, but there is nothing in that act which says that the President will only submit to us somebody who does reflect and support his policies.

Senator STEVENS. He would have to be a damn fool if he did otherwise. [Laughter.]

Senator LEVIN. Well, the act requires certain things, and if we didn't mean what we said in this act, then we should not have put it in there. The act says the Archivist shall be appointed solely on the basis of professional qualifications required to perform the duties of the Archivist and without regard to political affiliations. I am just now saying that the White House has apparently taken efforts here to be sure that the person who has been appointed reflects and supports the President's policies. That is what their letter says, and I believe that is inconsistent with the language of the act.

Senator STEVENS. The Senator is entitled to his opinion. The letter will be put in the record.[1]

Senator LEVIN. Do I still have a minute or two?

Senator STEVENS. Yes.

Senator LEVIN. You wrote a letter, an article in the Washington Times relative to the enforcement of goals and quotas of affirmative action programs in which you indicate that, "We will abide by the law if we must."

Does that reflect your view, the way you phrase that, about abiding by the law? You obviously oppose the law relative to affirmative action. Your views are very clear here. Even though the Supreme Court has indicated that race conscious numerical factors may be considered, even though it has been decided by the Supreme Court, you, nonetheless, reject it, although it is the law of the land. I am referring here to a 1986 article of the Washington Times.

But what I want to focus on is just the way you phrase that, "We will abide by the law if we must."

Is that the way you view the law?

Mr. AGRESTO. That was a press release I gave when we did sign the goals and timetables at the agency, and when I transmitted those goals and timetables to Clarence Thomas. I make the case there, as best I can, that I think that race goals and race conscious timetables are improper.

Senator LEVIN. Without getting into the merits of that, the fact is that the Supreme Court has ruled that affirmative action programs under certain conditions——

Mr. AGRESTO. Under certain conditions.

Senator LEVIN [continuing]. Which you don't make reference to in your article. I don't want to get into that. I want to get into your attitude about abiding by the law when you say, not that you will obviously abide by the law because it is the law, but instead that you will do so begrudgingly. "We will abide by the law if we must."

Does that nuance reflect your own attitude about abiding by the law?

Mr. AGRESTO. It hardly reflects an attitude, a general attitude, or even an attitude toward any other specifics, sir, except toward that one specific. Both in conscience and in my deepest self I felt, as I said, that I did not want that law to be put in that way. We will abide by the law, because we must. But I had to say that I thought that compelling the agency to file the goals and time tables was wrong. I had to say it.

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[1] See 498.

Have you read it in the whole context? I will so stand by that statement. No, my attitude certainly is not, "Gee, I wish at all times, there were either no laws or not this law." But in this particular context, over which we have had about 3 or 4 years' experience in an open and public debate, a debate in which, in the end, we lost, I simply had to say, "We will abide by the law, we must." But we did not think it to be something that I wanted to be proud of.

Senator LEVIN. Thank you, Mr. Chairman.

Senator STEVENS. Thank you very much, Senator. Further questions?

Senator EAGLETON. Yes, I have a few, Mr. Chairman. We talked about, Senator Levin, in part, about the Nixon papers, and rightly so. I won't go over that ground again, but while we are on the subject of the Presidential Records Act, have you discussed with anyone in the executive branch the disposition of the papers of the Reagan Presidency?

Mr. AGRESTO. No, sir, no.

Senator EAGLETON. Would it be proper for you to so do once you became Archivist?

Mr. AGRESTO. I think at some point, certainly. The Office of Presidential Libraries is already, I am sure, talking to the executive branch about the disposition of those papers, and yes, it does become proper to talk about those papers, where they go and how they are housed. Certainly.

Senator EAGLETON. You testified earlier that or stated in one of the prehearing interviews that when you were interviewed by White House staff for this position, they did not inquire about your political views?

Mr. AGRESTO. They knew that I was, that I am a registered Republican. They know, they knew and, in fact, we even went over some of the things that I accomplished at the agency, both in terms of policy, and cost saving, that were pleasant and pleasing to them. But at no time did they ever. Certainly, it was no kind of partisan discussion.

Senator EAGLETON. Were you asked how you would respond to political referrals for jobs at the Archives?

Mr. AGRESTO. No, I was not, and I have said to the committee's staff when I met with them, your staff, sir, that because it is meant to be and rightfully must be a nonpolitical agency, the fewer the number of political appointees from any administration in the Archives the better.

Senator EAGLETON. Would it surprise you to learn that others interviewed by the White House were asked about this position?

Mr. AGRESTO. I was, in fact, told this, and I was surprised I was not asked.

Senator EAGLETON. We have a letter on the way, Mr. Chairman, from one distinguished interviewee along these lines, and I would like to have leave to put it in the record when we receive it.[1]

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[1] See 505.

Senator **Stevens**. Without objection, we will do that.

Senator **Eagleton**. It appears, Mr. Agresto, that every principal user group of the Archives, looking down this witness list and letters that the committee has received, every principal user group has taken a formal position in opposition to your nomination. We heard from 13 groups thus far, and these are all reputable organizations that this committee has dealt with in the past.

Why would every single user group be opposed to your nomination?

Mr. **Agresto**. I don't think you can say that every single user group is opposed to my nomination. Certainly, even though he will not be speaking for the American Political Science Association, American political scientists are major users of the Archives. I know for a fact that that organization has not only not been on record against me, but has resisted all attempts to go on record against me.

Senator **Eagleton**. Mr. Mann, who is going to testify, is the next witness. I understand he is going to testify in person, but not on behalf of the American Political Science Association.

Mr. **Agresto**. The American——

Senator **Eagleton**. They have taken no position.

Mr. **Agresto**. Yes, and they certainly have not taken a position against my nomination.

Senator **Eagleton**. Thirteen groups have. Do you want to hear the 13 groups? We have got them somewhere. When my man returns, he has got my group list.

Mr. **Agresto**. Senator Stevens read off a list before.

Senator **Eagleton**. Did he?

Mr. **Agresto**. Opponents of Dan Boorstin's for Librarian of Congress. I think there were more than 13. Some of them were the same groups.

Senator **Eagleton**. Here are the groups that have taken a position officially against your nomination: American Historical Association; Organization of American Historians; Society of American Archivists; American Library Association; American Military Institute; American Association for State and Local History; National Council on Public History; Society for History in the Federal Government; American Studies Association; Midwest Archives Conference; Federation of Genecological Societies; National Association of Government, Archives and Records Administrators; Mid-Atlantic Regional Archives Conference; Oral History in the Mid-Atlantic Region.[1]

Now, these groups have all come out against your nomination. Why is that, in your opinion?

Senator **Stevens**. Because he is not an archivist.

Senator **Eagleton**. Is that your answer that you have just been spoon fed by Senator Stevens?

Mr. **Agresto**. I can begin with that sentence.

This came up at the very beginning, Senator. The organizations you listed are historical associations and archival associations, and I have absolutely no doubt that historical associations would prefer to see a historian; archival associations would want an archivist, would want one of their own.

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[1] Subsequently, the Southern Historical Association and the Coordinating Committee on Women in the Historical Profession took official positions opposing the nomination.

I have tried to make the case as best I can: The person who is a public servant, a trained administrator, holds a doctorate in political science, that he, too, could be an Archivist of the United States and do a crackerjack job of it.

I have no, absolutely no arguments in principle with the archival societies who say that an archivist, one of them, is wholly appropriate and wholly qualified and that they would prefer one. Most of these organizations, in fact, did have candidates or a candidate of their own with whom they were unsuccessful.

Yes, archivists would prefer to have an archivist in that position. Historians would prefer to have a historian. I must say, however, that I don't quite understand the argument that the historians make that the Archivist should be an archivist or a historian but not a political scientist.

Senator STEVENS. If you will yield right there, I have got to leave and go to another meeting. I want to announce that we will find time, either on September 9 or 10, to finish the hearings convenient with Senator Mathias and Senator Eagleton.

Senator EAGLETON. Do you want Senator Levin and I to wind up?

Senator COCHRAN. The heavy guns got rolled in here.

Senator EAGLETON. I will be finished in another 10 minutes.

Mr. AGRESTO. Could I add something, Senator Eagleton?

Senator EAGLETON. Yes.

Mr. AGRESTO. Because of my position as the head of an agency that makes grants, I have not been on the road soliciting letters on my behalf, and certainly not soliciting organizations. But I do know letters that have come. Let me put it this way: I know, because the committee has told me, that there are a number of letters from historians, political scientists, heads of educational and political institutions on my behalf.

The thing that divides those letters are not organizational membership, but those who know me and those who don't. I know you have a number of letters from historians in your home State who have written on my behalf who have known me for years and years, because they told me; historians, political scientists who know me, know my work, have followed my career, those are the letters you have on my side.

Many of those organizations have not met with me, do not know me, and do not know my work.

Senator EAGLETON. Did you ask to meet with any of these organizations that I recited?

Mr. AGRESTO. Yes; in fact, one of them I did meet with, MARAC, which you mentioned, I met with them. I was to meet with NAGARA.

Senator EAGLETON. You better spell those out.

Mr. AGRESTO. N-A-G-A-R-A.

Senator STEVENS. I have to leave. Can I finish my comments? Let me give you a little piece of advice. That is, just keep your cool and don't get worried. [Laughter.]

Mr. AGRESTO. I thought I was doing that. [Laughter.]

I was saying a second ago that that organization, NAGARA, I had a meeting with them, I think in June, June 13, but they canceled that meeting.

Senator EAGLETON. They canceled?

Mr. AGRESTO. They canceled the meeting.

Senator EAGLETON. I have no objections, Mr. Chairman, for other letters that the committee has received in support of Mr. Agresto from individuals, historians, political scientists, archivists—I trust the committee has them—from going into the record. I am not trying to make a lopsided record. If we have received several individual letters in support from distinguished scholars, archivists or whatever, I think they ought to be part of the record.

The final matter I want to pursue relates to EEOC matters. The National Endowment for Humanities, under William Bennett, now the Secretary of Education, refused to submit information on underrepresentation of minorities and women and goals and timetables to the Equal Employment Opportunity Commission in fiscal 1983. NEH thus became one of the very undistinguished group of 4 agencies out of 113, 4 out of 113 that refused to submit such information.

Will you describe how that refusal to comply came about and what role you played in it?

Mr. AGRESTO. Yes; I would be happy to. I think as the committee knows, William Bennett was on record, in fact, published and on record as being opposed, in principle, opposed to goals and timetables to reverse discrimination, affirmative action, in certain areas in a book that he had written long before he became Chairman of the National Endowment for the Humanities. I agreed in principle with that book, as well.

In 1983, when we were at the National Endowment for Humanities, we read in the newspapers that William French Smith had said that EEOC had exceeded its authority in requesting or demanding goals and timetables from the Federal agencies and that the Justice Department would not provide goals and timetables.

This was wholly in accordance with what Mr. Bennett, and I must say, I myself thought to be proper. We have great hesitation in saying that we intend to fill jobs or promote or hire on the basis of race or sex. In fact, before I finish, I do have some figures I mentioned before. I wouldn't mind going over them again.

So we did not comply with the request from the EEOC. It was ourselves, it was the Justice Department, and it was the Federal Trade Commission. I have just read in the Federal Times that in this current year, even though we at NEH have complied, that Justice has not, FTC has not, OPM has not, the State Department has not, Department of Education has not. Not an undistinguished list; but nevertheless, we are not on that list any longer.

The reason why we are not on the list any longer was by this: We defended our position for 2 years, and thought it to be morally and constitutionally and legally correct. We had the opinion of the Justice Department that said these did not have to be filed. We had the opinion of our own general counsel that agreed with that.

We defended our position before congressional committees. Then, however, our reauthorization act said we should file goals and timetables, so we did.

Senator **Eagleton**. Mr. Agresto, I had just had a little chat with the chairman. There are going to be two votes. One vote is already in progress. The five bells will ring, and then there will be another vote immediately following. If it is all right with Senator Levin, I thought that we might suspend here until Mr. Agresto comes back in September.

Senator **Levin**. That would be fine. I just have one question.

Senator **Eagleton**. I have other questions that I want to pursue on this.

Mr. **Agresto**. Should I continue or do you want me to end now on EEOC?

Senator **Eagleton**. Are you getting near the end?

Mr. **Agresto**. Pretty much so. We did file. I think the Congress wishes that I also file at the Archives, and I will. The stand we took all along was never secret or private. It was as open a stand as we could have. This matter is still unresolved before the courts. Nevertheless, having been told to file goals and timetables, we did.

I wouldn't want anyone to think that there has ever been a hint of discrimination at the National Endowment for Humanities at any time. I went through some figures before: That women hold 69 percent of all positions. Fifty percent or more of the professional positions are held by women compared to 18 percent governmentwide; that 10 percent of the staff at the NEH are black women at grades 14 to 15, 10 times the Government average. That 60 percent of the professional positions at NEH are occupied by women or minorities; that when I came to NEH there were six divisions. One of them was headed by women. Now there are five divisions, three of them headed by women.

All of this was not done expressly to fill goals or timetables; there were no timetables that said that some would be promoted and they would be women and minorities. The best were simply hired or promoted. Nondiscrimination was a policy I am absolutely proud of. Nevertheless I will file goals and timetables. I have, in fact, filed goals and timetables. But I do think I can defend the policy that says that people should not be judged on the basis of their race or sex.

Senator **Eagleton**. I will pursue my questions after the recess.

Senator **Cochran**. Senator Levin?

Senator **Levin**. I will do the same, but there is just one more follow-up question relating to the Nixon papers, if I can take you back to that, and the regulations we discussed relative to those papers. Do you believe that those regulations are clearly in line with congressional intent?

Mr. **Agresto**. The regulations?

Senator **Levin**. The sixth version.

Mr. **Agresto**. Is it now six regulations. It seems to me they do speak to congressional intent, yes. And I think this committee and Congress are pleased with those regulations as they were approved by Congress.

Senator **Levin**. So the answer to my question as to whether those regulations are clearly in line with congressional intent——

Mr. **Agresto**. Yes.

Senator **Levin**. Your answer would be yes?

Mr. **Agresto**. Yes.

Senator LEVIN. Since we won't get the transcript of this for a couple of days, I wonder if you might share a xeroxed statement of your opinion of the Nixon papers with the staff.

Mr. AGRESTO. Sure.

Senator COCHRAN. Senator Eagleton?

Senator EAGLETON. Have we set a specific day?

Senator COCHRAN. The chairman set a date of September 9 or 10, a date that would be convenient.

Senator EAGLETON. At the outset, it was indicated Senator Levin and I would finish our questioning of Mr. Agresto today. We haven't been able to do that. So we will be able to pursue that?

Senator COCHRAN. There is no question about your right to question the witness at the new hearing. So this hearing will stand in recess and will be rescheduled for a later date.

This concludes the hearing today.

[Whereupon, at 11:55 a.m., the committee was recessed to reconvene at the call of the Chair.]

NOMINATION OF JOHN AGRESTO

TUESDAY, SEPTEMBER 9, 1986

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The committee met pursuant to notice in room SD-342, Dirksen Senate Office Building, Hon. Ted Stevens presiding.

Present: Senators Stevens, Mathias, Durenberger, Eagleton, and Levin.

Senator STEVENS. Today we will continue the hearing on the nomination of John Agresto to be the Archivist under the new, independent National Archives and Records Administration. When we left on August 13, Senators Eagleton and Levin were questioning Mr. Agresto. When they arrive, we will continue with his testimony and any other members who wish to question him may do so.

Mr. Agresto is still under oath, and so when the other members arrive we can proceed. Meanwhile, we have some panels that wished to testify.

Under the procedure of this committee, when we have a panel, each member of the panel is recognized for 5 minutes to present his or her views, and the statements that are presented will be printed in the record.

Our first panel is Mr. Marcus Cohn of the National Council on the Humanities and Dr. Fred Rotondaro, the executive director of the National Italian American Foundation. Come forward, please.

At this point and before I call the first panel, I would like to place into the record the testimony received from Frances Rhome, the director of the Institute for Humanities Research, Indiana-Purdue University in Bloomington, IN; Gertrude Himmelfarb, Professor of History of the Graduate School and University Center of the City University of New York; the statement of Dr. Phyllis Zagano, research fellow at the Rockford Institute; and the statement of Dr. Jacob Neusner, Ungerleider Distinguished Scholar of Judaic Studies at Brown University. All of these statements are in support of the nominee.[1]

Mr. Cohn, you are first, sir, so we would be happy to hear your statement.

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[1] See p. 315.

TESTIMONY OF MARCUS COHN, FORMER MEMBER, NATIONAL COUNCIL ON THE HUMANITIES, AND FRED ROTONDARO, PH.D., EXECUTIVE DIRECTOR, NATIONAL ITALIAN AMERICAN FOUNDATION[1]

Mr. COHN. Thank you. I am Marcus Cohn, senior partner in the law firm of Cohn and Marks, which practices extensively in the field of mass media. I received my bachelors degree from the University of Chicago in 1935 and my law degree there also. I also received a masters of law degree in law from Harvard in 1940.

In 1980, President Carter nominated me as a member of the Council of the National Endowment for the Humanities and I served in that position until very recently. I served on the Council under three different chairman: Joseph Duffey, William Bennett, and Acting Chairman John Agresto.

I got to know each of these gentlemen not only as a Council member, but I also got to know each of them on a social basis. Each had different perspectives as to what the goals of the NEH should be and with these different perspectives, different attitudes of how those objectives were to be achieved.

I think it is fair to say that Joe Duffey and Bill Bennett were on opposite ends of the spectrum. One of the remarkable things about Dr. Agresto was that he was able to combine, in a very, very meaningful way, what I consider the best attributes of the two prior chairmen and at the same time discarding some of their other attributes.

While Dr. Agresto was Acting Chairman, I met with him on several occasions, both socially and to discuss matters regarding the NEH. In each of the instances where I wanted to discuss with him a matter of NEH substance, I found him not only well prepared on the substance of the issue, but willing to listen to views which were entirely different from his own. In each of those instances, there was a give and take of intellectual dialogue which I found to be, to put it mildly, somewhat different than the dialogues I had on substantive issues with the former Chairman.

One of the things which was very noticeable as soon as Dr. Agresto became Acting Chairman was the elevation of the esprit de corps of the staff. What obviously had happened was that his leadership was such that the staff felt an even greater commitment to the NEH.

At the Council meetings with Dr. Agresto presiding, issues sometimes arose which were highly controversial, and there was spirited debate among the Council members. Dr. Agresto not only permitted those debates but, I think, actually encouraged them. During the course of those debates, he gave his opinion but never permitted his role as Acting Chairman to dominate the discussion. He was, in essence, one of the fairest Chairman that I saw during my tenure at the NEH.

I know very little about the National Archives, although I have had the pleasure, of course, of visiting it from time to time. Even though I lack any particular knowledge about that institution, I do know that if it requires an individual with a very fine mind, an ability to get along with its staff and a dedication to its goals, then the present nominee, John Agresto, is the perfect choice.

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[1] See p. 223 for Mr. Rotondaro's prepared statement.

I urge this committee to recommend to the Senate the nomination of John Agresto as the National Archivist of the United States.

Senator STEVENS. Thank you very much, Mr. Cohn, for coming forth with that statement.

Dr. Rotondaro.

Dr. ROTONDARO. Senator Stevens, thank you very much for allowing me to appear before this committee today. I come, as Mr. Cohn, in support of the nomination of Dr. John Agresto to be the National Archivist. I speak on behalf of the National Italian American Foundation, an organization that is approximately 10 years old.

I am, as you know, the executive director of the organization. Very briefly, I think it might be useful to tell you a little bit about this organization and that it does bear directly in the testimony you have already gotten on Dr. Agresto's qualifications. We engage in a variety of activities, a wide scope of activities including seminars and cultural themes, historical themes. We conduct programs on the history of the United States. We conduct programs with a wide variety of other educational and ethnic organizations.

One of the central themes we have found in our work over the course of the last 10 years is that it is becoming more and more imperative for organizations such as ours, for ethnic and educational organizations, to instill in our young people a sense of what the American experience, what the American past, is all about.

It is for this reason and primarily this reason that we appear today in support of Dr. Agresto. I have to be very candid about this: We are absolutely delighted as an Italian-American organization that a grandson of Italian immigrants has been nominated to a post that would place him, in effect, in a major policymaking role regarding the preservation of our national records.

We think there is a certain symbolic beauty about this in that many, many ethnic groups, not just Italians, are, in fact, now fully being recognized as being part of the American mainstream, and we think this nomination is in recognition of that.

However, it is not because of his ethnic heritage that we are here today in support of that nomination. Basically, there are three fundamental reasons that bring us here. Reason number one is Dr. Agresto's comments, his policy initiatives, his philosophy toward what an organization such as the National Archives should be.

As we read his testimony, his prior testimony before this committee, and as we look at the work he has accomplished at the National Humanities Center and at the National Endowment for the Humanities, we see a scholar, but very importantly, a scholar who is dramatically interested in the concept of public education and who recognizes the very vital fact that the role of scholarship, that the role of education, that the role of the preservation of our national records should be aimed at the broadest possible scope of public education, particularly as it has a long-term impact on our younger people.

We have examined some of the recommendations he has made in his testimony regarding the nomination as National Archivist, and we see there what we feel to be a concept of a National Archives as a dynamic and a positive force in public education. We approve of that heartily, because as I state, in the work that we have done at the National Italian American Foundation, we know how vitally necessary this is.

There is a second very significant reason why we appear here today, and that reason is this: It is relatively easy for someone, Dr. Agresto, myself, any number of individuals in this room, to say that we are going to put into focus plan A, B, C and D. It becomes a lot harder to actually implement those plans. As Mr. Cohn pointed out, we have been observing, not as closely as he has, but we have observed over the course of years Dr. Agresto's record over at the National Endowment for the Humanities, and we see a very proven outstanding administrator.

We are firmly convinced that the kind of programs he talks about implementing at the National Archives he is capable of implementing. Once again, we would applaud the fact that President Reagan has nominated an individual who has both scholarly background and the administration capability to implement his fundamental ideas.

The third point, and very briefly I would comment on this, is that we are, as other witnesses have been, impressed with his scholarly credentials. He holds a Ph.D., as you know, from Cornell University, one of the very finest schools in this country. He has written widely, and very importantly, he has written not merely on parochial scholarly interest, not that there is anything wrong with that. I should point out my own background; I spent 9 years as a university teacher of American Studies, and I do have a doctorate in American Studies, so I recognize the importance of scholarship. But I also recognize the importance of the very many articles that Dr. Agresto has written in which he addresses the theme of education in the public sense, in which he addresses the theme of how individuals such as he, as an administrator at any agency or as the potential National Archivist, would utilize those resources to help educate in the broadest sense the American public.

Those are the three fundamental reasons why we appear in support of his nomination, and we would certainly urge in the strongest possible terms a positive vote for that position.

Thank you.

Senator STEVENS. Thank you very much. Dr. Rotondaro.

Senator Mathias, do you have any questions?

Senator MATHIAS. Not of these witnesses.

Senator STEVENS. We thank you both very much for coming forward with positive testimony, and we welcome your comments.

The next panel is Mr. Roy Tryon, treasurer of the National Association of Government Archivist and Records Administrators; Rabbi Malcolm H. Stern, past president and current fellow, Federation of Genealogical Societies; and Ms. Ann Morgan Campbell, excutive director of the Society of American Archivists.

Mr. Tryon, we would be happy to have your statement.

TESTIMONY OF ROY TRYON, TREASURER, NATIONAL ASSOCIATION OF GOVERNMENT ARCHIVES AND RECORDS ADMINISTRATORS; RABBI MALCOLM H. STERN, PAST PRESIDENT AND CURRENT FELLOW, FEDERATION OF GENEALOGICAL SOCIETIES;[1] AND ANN MORGAN CAMPBELL, EXECUTIVE DIRECTOR OF THE SOCIETY OF AMERICAN ARCHIVISTS [2]

Mr. TRYON. Good afternoon. Thank you for the opportunity to address this committee. I am Roy Tryon, treasurer of the National Association of Government Archives and Records Administrators, referred to as NAGARA. I also happen to be the State archivist and records administrator of the State of Delaware. NAGARA is a nationwide professional organization of local, State, and Federal Government archivists and records administrators. Our members have responsibilities similar to those of the Archivist of the United States, though on a smaller scale.

We know the challenges the Archivist must face and the abilities required to meet those challenges. We also have a vital professional interest in the National Archives and a concern with who becomes its Director.

There are two reasons for our concern: First, the National Archives superintends the Federal Government's archival records and thereby preserves a vital component of the Nation's and the people's documentary heritage. It must have the capacity and the leadership to deal with existing problems and to meet the information management challenges that evergrowing volumes of paper documents and electronic records pose for the Federal Government.

Second, the National Archives is not only the archives of the Federal Government, it is the National Archives in the sense that it is the leader of the Nation's government records community. We advocate a strong, active partnership between the National Archives and non-Federal programs with similar functions and interests, especially State programs.

We need the National Archives' leadership in archival research and development, in developing new approaches to records appraisal and selection, in preservation, and in public and educational programming. Moreover, the Archivist of the United States chairs the National Historical Publications and Records Commission, an important agency that provides grants for historical records programs and one that has supported strengthening the entire archival profession.

The National Association of Government Archives and Records Administrators fought vigorously for independence for the National Archives in 1984. The selection of the Archivist of the United States concerns all of our members. It is of interest in Dover and Raleigh, in Annapolis and Columbus, and in Juneau and Jefferson City, as well as here in Washington.

And it is time for the appointment to be made. It has been 23 months since the previous Archivist, Robert Warner, announced retirement plans and 17 months since he left the National Archives. The new, independent National Archives needs a permanent leader to set directions, develop policies, and serve the Federal Government and the broader Government archival world.

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[1] See p. 228 for Rabbi Stern's prepared statement.

[2] See p. 234 for Ms. Campbell's prepared statement.

This association is concerned that the current nominee, Dr. John Agresto, does not possess all of the basic qualifications needed to carry out the exacting and important responsibilities of the Nation's chief archival officer. More than a year ago, this association outlined selection criteria for the White House Personnel Office. They are as follows:

One, experience in administering records or a strong, demonstrated commitment to their effective management and preservation;

Two, the ability to work closely with State and local government records administrators on matters of common concern;

Three, a reputation for excellence and leadership within the individual's profession;

Four, appropriate scholarly credentials;

Five, sufficient national statute to enable the individual to provide leadership to a wide range of constituent groups;

Six, experience in administering large organizations or institutions;

And finally, No. 7, familiarity with the Washington scene and the workings of the Federal Government.

The Archivist's appointment should be made, in the words of the National Archives Independence Law, "* * * solely on the basis of professional qualifications."

Senator Roth, chairman of this committee, noted at the time that the law gained passage that the new Archivist must "be . . . a dedicated professional in the field of archival matters, the treatment of historical records, and in records management procedures." The position certainly requires an experienced professional with independence, good judgment, and sufficient stature to command respect and to work with the leaders of Government and the scholarly community. The appointment is truly important for all of us, as important as the issue of National Archives independence itself. The appointment of an individual well qualified and recognized for his or her experience and abilities will confirm and solidify the Archives' stature as an independent Federal agency. And because it is the first appointment under the new Archives independence law, it will set an important and, hopefully, positive precedent for the future. The appointment, therefore, ia an important occasion for all of us.

It is the examination of these issues which has led the board of directors of this association to decide against supporting Dr. Agresto. We believe there are other individuals who are better qualified for the leadership and experience to become the Nation's premier achivist. Some time ago, we submitted the names of several of these individuals to the White House Personnel Office. I urge you to look closely at this matter and to support a truly independent, respected, and active National Archives.

I sincerely appreciate the opportunity to testify before this committee today. I thank you.

Senator STEVENS. Thank you very much. Let me point out to the other two witnesses that we would appreciate it if you would hold your statements to 5 minutes. There will be a vote at 2:30 and then another vote following that. So we will have to leave at 2:30 for those votes, and then we will come back for the remaining panel.

Our next witness is Rabbi Stern.

Rabbi **Stern**. Mr. Chairman, thank you for the opportunity you have given me to speak on behalf of the largest group of users of the National Archives, the genealogists.

May I explain who we are: We are no longer the stereotypical "little old ladies in tennis shoes pursuing their descent from Charlemagne." That image died in the 1950's.

In October 1981, I appeared before a similar subcommittee to testify on behalf of the genealogical community in support of S. 1421, the first Archives independence bill proposed by Senators Eagleton and Mathias. At that time I was halfway through my 7 years of service on the Archivist's Advisory Council. My two terms ran from 1977 to 1984. I became well acquainted with the mission and functioning of the National Archives and Records Service. I learned a great deal about the multifaceted responsibilities of our National Archivist.

During my service on the Advisory Council, Archivist James B. Rhoads retired, and I was on the committee that was delegated the responsibility of trying to find a replacement.

We advertised widely. In the consensus of the committee, few of the applicants demonstrated adequate qualifications for the important position of Archivist. We soon recognized that to secure the best candidates, we would have to solicit the interest of qualified individuals, and this we proceeded to do.

As a result of our careful deliberations, we submitted a panel of, as I recall, some eight qualified candidates to an evaluating group of five senior executives of the General Services Administration, then responsible for the Archives.

From the outset of his becoming archivist, Dr. Robert D. Warner, the ultimate choice, demonstrated great sensitivity to the needs and worth of the genealogical users, and we responded in kind. The Archives published a handsome and useful "Guide to Genealogical Research in the National Archives" along with other helpful finding aids. But knowing budgetary limitations, we organized a national coordinating committee of major genealogical groups, to raise funds for the purpose of creating finding aids of service to genealogists.

In the process, we became the first user groups to raise funds for the Archives through the Archives Trust Fund. Budget cuts also threatened an Archives Summer Institute of Genealogy, which has been going on since 1950. A most successful one was just held recently in July.

In his testimony on August 13, Mr. Agresto spoke of his goal of creating programs of outreach. If he had read the materials which I know the Archives furnished him, he would be aware of how many outreach programs are being carried out, despite budgetary limitation on an overworked staff.

Senator Mathias may recall my statement in 1981 that the National Archives has become a great national university. The Archives not only absorbs and retains information, but disseminates it. You, the Members of Congress, know the value of the Federal

Register, published under the jurisdiction and using the resources of the Archives.

Many books have been published, both by Government and by individuals, from research at the Archives. In its various facilities around the country, especially in the Presidential Libraries, the Archives supervises a series of museums, a veritable showcase of American life and documentation.

I have underscored these aspects of the functioning of the National Archives because they have relevance to the matter before us: The ability of John Agresto to assume the role of administering this large and significant enterprise of our Government.

My firsthand knowledge of Mr. Agresto has been limited to his testimony of August 13, and what I read of him in the press. I must say that had his résumé been submitted to the qualifying committee on which I served when Dr. Warner was selected, it would not have passed our committee. Nor did Mr. Agresto's personal statement reassure me about his professional qualifications for this assignment.

He defended his outsider status by comparing his situation with that of Dr. Boorstin's nomination for Librarian of Congress. Mr. Boorstin came to that position from teaching posts at Harvard, Swarthmore, and the University of Chicago, and from serving as senior historian at the Smithsonian Institute. He was a published author whose name was well known in scholarly circles and not totally unknown to the public-at-large.

Mr. Agresto's credentials pale by comparison. Furthermore, I am informed by Washington insiders and Library of Congress staff that Mr. Boorstin's administration at the Library of Congress has left something to be desired.

All of this leaves the geneological community I represent with a number of questions whose answers I believe are basic.

Senator STEVENS. Your time is up, Rabbi Stern. We would be happy to have the balance of your statement, printed in the record, if you would like to summarize it. We are limited to 5 minutes today. We have a vote starting at 2:30, as I said.

Rabbi STERN. I appreciate that, sir, and will do what I can.

Why did the White House ignore user groups in choosing candidates for Archivist? It is obvious that political cronyism is involved in the selection of Mr. Agresto. This violates the law already referred to, the Archieves Independence Law. The Independence Law came into being over the very fact that politically appointed administrators of the General Services Administration had so little concept of the mission and goal of the Archivist post.

So we, who labored with you to effectuate Public Law 98-497, will not sit idly by and see it violated. Thank you very much.

Senator STEVENS. Thank you very much.

Ms. Campbell.

Ms. CAMPBELL. Thank you, Senator Stevens. My name is Ann Morgan Campbell. I have served as Executive Director of the Society of American Archivists since 1974. In 1975-77 I was a member of the National Study Commission on the Records and Documents of Federal Officials.

SAA is not terribly comfortable with opposing a Presidential nominee. However, in view of the uniqueness of this appointment, our close involvement with the issues leading to independence, and our role in that hard-fought battle for this legislation, we have now resolved to do so.

We believe strongly that the nomination is insensitive and inappropriate to the many groups who developed criteria for the position and who were never asked for opinions on this nominee, and much more seriously, to the future of the Archives as an institution and to the documentary heritage of the United States.

We urge that Mr. Agresto not be confirmed by the Senate for this position. This is no reflection on Mr. Agresto or his credentials for other positions. This is a reflection on the match between Mr. Agresto's credentials and the qualifications required for this particular position. The appointment is similar to judgeship, in that it may be a lifetime appointment and should be viewed as such.

Carrying this analogy one step further, the nominee for this position has been deemed not qualified by the equivalent of the American Bar Association, the Federal Bar Association, the National Trial Lawyers Association and all other reputable professional organizations.

Confirmation of Mr. Agresto would fly in the face of the unanimous judgment of the professional, historical, and user groups and contradict the language and intent of the legislation.

My written testimony is the same as that I had planned to deliver before the committee during the hearings in August, and I ask that that be entered in the hearing record. However, having the benefit of listening to that morning's discussions, I have additional points I wish to make.

There is simply no comparison between the credentials of John Agresto and Daniel Boorstin. The Society of American Archivists is not opposing Mr. Agresto simply because he lacks any credentials or background in archives or records management, although we would have liked to have had an archivist nominated for this position and believe that is what the law intended.

It is not on this issue we have chosen to oppose Mr. Agresto. We oppose him, because we feel he lacks any of the requisite knowledge and skills for this position. The society, in fact, would welcome the nomination of a man of the caliber of a Daniel Boorstin.

As I listened to Mr. Agresto's testimony and read his written submission to this committee, I was and am troubled by his characterization of the position of the Archivist of the United States as one of teacher. Let me quote one sentence from the transcript of the hearings:

> If I had to put down one thing I can do and will do as Archivist if I am confirmed, it is I will work with that collection and work with teachers and with students and with the general public and the media to see to it that my understanding, our understanding of the greatness of that heritage becomes a public legacy.

When I heard him say that, I thought that Mr. Agresto did not understand what the real job of Archivist of the United States is. Then I read his written submission. There, he said:

> Family histories are rarely the windows to academic intellectual history or standard political histories, but they are treasure chests of the moral history of this nation.

When I read that, I was sure he didn't understand what archivists should do.

Let me explain. What do archivists do? They obtain records, arrange and describe records and make them available for use by researchers and perhaps prepare them for exhibit. They serve as guides to persons doing research, but they do not themselves interpret records for the users.

For example, an archivist will answer a question of fact, such as when was the Capitol built, but will generally not answer an interpretive or causal question. It is the archivist's job to make materials available so that the researcher can answer those questions himself, those questions of interpretation.

It is the experience of archivists that it is tempting to answer such interpretive questions, but once begun, it is a very tricky business, and one that archivists wisely avoid.

Let me give you two recent examples of incidents where archivists at the National Archives were asked to interpret records, to interpret recent history, and wisely chose not to do so. One was the case of records relating to Ferdinand Marcos, records of the U.S. military just after World War II, which seem to provide evidence that Marcos' stated role as a war hero is fraudulent. The archivists made the records available, and this, while Marcos was still in power, but they refused to draw conclusions on them for the journalists that repeatedly asked them to do so.

A second case happened shortly thereafter, during the election campaign of Kurt Waldheim for President of Austria. Again, open records in the National Archives appeared to cast doubt on Waldheim's stated position on his inconsequential Nazi past.

Senator STEVENS. Ms. Campbell, I will have to interrupt and ask you to finish and see if any Senators have questions before this vote.

Ms. CAMPBELL. Again, archivists were begged to explain what the records "mean" and they told the press to draw their own interpretations.

A reputation for integrity is vital to an archivist. Archivists must always administer records that are closed to research, and researchers must trust them to administer those records evenhandedly. Anything that might tend to erode that trust must be avoided.

Senator STEVENS. Ms. Campbell, could I ask you to finish, please?

Ms. CAMPBELL. Yes, sir. If researchers would hear the Archivist for the United States take a position on the true meaning of the spy cases of the 1950's or characterize a certain type of history as moral history, they would begin to wonder about the type of treatment they would receive in the Archives if they held contrary views.

Senator STEVENS. Thank you very much.

Do you have any questions, Senator Mathias?

Senator MATHIAS. Yes; Mr. Chairman. First of all, may I ask unanimous consent for an opening statement to be entered into the record?

Senator STEVENS. Yes, certainly.

[Senator Mathias' opening statement follows:]

OPENING STATEMENT OF SENATOR MATHIAS

We are here today to perform our constitutional duty as Senators in the advise and consent process. We are here to examine the background and qualifications of a nominee for a unique and important position—the Archivist of the United States—the public trustee of our Government's records.

This position is unique among all appointed positions in Government. It is so because this committee made it so in enacting the Archives independence legislation of 1984.

The Congress at that time reestablished the National Archives and Records Administration as an independent agency and specifically designed the position of Archivist as a professional nonpartisan one with no fixed term of office. Our purpose was to insulate the position from political interference, assign a new and prominent status to the position of Archivist, and restore public confidence in this public trustee.

In most of its other business, the Senate can revise, amend, or otherwise change its mind by revisiting legislation. That is not the case in this instance. This appointment is intended to be a long-term permanent one.

In many respects, this nomination is similar to a judicial nomination. As a member of the Senate Judiciary Committee, I have spent much of the summer reviewing the background and qualifications of two Presidential nominees to the highest court in the land—the Supreme Court. While the office involved here is very different, the principle of independence of the officer is important in both cases. Accordingly, the Senate's duty is each case is to give thorough and exacting scrutiny to the nomination.

So we are here today to listen and learn all that we can about this nominee for this most important and unique position so that we can advise the Senate whether the nominee has what it takes to be a competent, professional, and independent keeper of the Nation's records.

Senator MATHIAS. Let me ask Ms. Campbell a question. What is the normal practice for hiring an archivist for a State archives?

Ms. CAMPBELL. Senator Mathias, in recent years, States have constituted search committees who have established professional qualifications for the position, and rigorous examination has been made of applicants for Archivist. The decision of who to employ has been made in a nonpartisan and professional manner.

Senator MATHIAS. Is this a fairly uniform practice among the States?

Ms. CAMPBELL. I would be reluctant to say the average is 100 percent, but it is an increasing practice, and in recent years, I can't remember an exception to it.

Senator MATHIAS. Can you think of any exceptions to the employment of nonhistorians and nonarchivists who have headed any major archival institutions and do so with what you would consider distinction?

Ms. CAMPBELL. I can't identify an exception.

Senator MATHIAS. I have several more questions, Mr. Chairman, but in view of the pressing time, perhaps Senator Eagleton would like to go ahead.

Senator EAGLETON. Do you want me to go over and vote and come back?

Senator MATHIAS. We have two votes; that is the problem.

Senator EAGLETON. Oh, there are two. I have no questions for this panel.

Senator STEVENS. Go right ahead.

Senator MATHIAS. What do you feel, on the basis of your observation, are the basic qualifications of an archivist?

Ms. CAMPBELL. An archivist should have training in history or library science; an exquisite sense of the challenge of research and experience, at higher levels, with management; and should be content to administer an institution that furnishes records to others, that is, he should be impeccable, nonpartisan, and evenhanded. An archivist should be an honest broker.

Senator MATHIAS. The fact that the Society of American Archivists is opposing this nomination, is that an indication that you feel that Mr. Agresto does not meet these basic qualifications?

Ms. CAMPBELL. Yes, sir.

Senator MATHIAS. Let me ask you a question which may be in the minds of some people. Is the position you have taken in any way related to grants or financial support? Would you like to have somebody else who would treat you more generously than you think Mr. Agresto is going to treat you?

Ms. CAMPBELL. Well, I don't think the society is treated very generously today. The society receives small grants from the National Historical Records and Publications Commission. The society's income was $1 million last year, and I think that $30,000 of it was from National Archives sources. So that is not material.

Senator MATHIAS. You have talked of this appointment as being similar to a judgeship, based on demonstrated, positive qualification. Was it your understanding, as we went through the prolonged process enacting this bill, which Senator Eagleton remembers in some detail, was it your understanding that the unique language of the independence bill, substituting for a fixed term as passed in the Senate, would provide all the protection that was needed to ensure a professional, qualified candidate? Is that your expectation?

Ms. CAMPBELL. That was our expectation, Senator.

Senator MATHIAS. Are you aware of any provision in law that is similar to the one relating to the appointment of Archivist?

Ms. CAMPBELL. It is my understanding that one other senior position in the Federal service requires professional qualifications.

Senator MATHIAS. As far as you know, that is the only other comparable provision of law?

Ms. CAMPBELL. Yes, sir.

Senator MATHIAS. So we are dealing with a very rare case.

Ms. CAMPBELL. We believe we are dealing with a very rare case, indeed.

Senator MATHIAS. Thank you very much, Mr. Chairman.

Senator STEVENS. The committee stands in recess while we go to vote. We will be gone some time as we have two votes in a row. Our next panel will be Mr. George, Ms. Miller, and Dr. Nelson. Thank you very much.

[Short recess.]

Senator STEVENS. Our next panel is Mr. Gerald George, director of the American Association for State and Local History; Page Miller from the Organization of American Historians; and Dr. Anna Nelson, professor of history, American University.

We would appreciate it if you could summarize your statement in 5 minutes or less, and we will put the complete statement in the record as though read. We do have three other panels. We also have asked Mr. Agresto to come back on the stand this afternoon.

Our first witness is Mr. George. We are happy to have you here, sir.

TESTIMONY OF GERALD GEORGE, DIRECTOR, AMERICAN ASSOCIATION FOR STATE AND LOCAL HISTORY;[1] PAGE MILLER, ORGANIZATION OF AMERICAN HISTORIANS;[2] AND ANNA K. NELSON, PROFESSOR OF HISTORY, AMERICAN UNIVERSITY [3]

Mr. GEORGE. Thank you, Mr. Chairman. I am prepared to be brief.

I am Gerald George, director of the American Association for State and Local History. I represent 6,000 historical societies, archives, museums, and local historians throughout the United States.

Many of these are users of the Archives, and we care very deeply about it. Earlier, I submitted written testimony to the committee which I hope you are willing to make part of the hearing record.

Senator STEVENS. We would be happy to do that, yes.

Mr. GEORGE. Right now, I would like to speak very briefly to some immediate concerns. I don't like to oppose a nominee of the President of the United States. Our association has never testified against a Presidential nominee in my 13 years on the staff.

Mr. Agresto's recent implication that we are part of some group that also opposed Daniel Boorstin to be Librarian of Congress is wrong; we did not. We would, in fact, welcome someone of Mr. Boorstin's stature to be Archivist of the United States.

Mr. Boorstin is one of the most distinguished historians and scholars in America. He has earned degrees from Harvard, Yale, and Oxford and honorary degrees from nine other universities.

Senator STEVENS. I think I am the one who made that statement, Mr. George. I don't think Mr. Agresto did. I appreciate your comment, but I am the one who raised the question about the opposition that was presented to Dr. Boorstin at the time he was nominated to be Librarian. It was just as intense, if not more intense, than this opposition.

Mr. GEORGE. It seemed to be coming from Mr. Agresto, Mr. Chairman, but in any event, we were not among the organizations that opposed either Dr. Boorstin or that have opposed Presidential nominees.

Dr. Boorstin has published at least eight books and he has won the Barcroft and Pulitzer Prizes. I like Mr. Agresto, and I would gladly support him for tenure at Kenyon College or even to be head of its department of political science. Under his tenure at the National Endowment for Humanities, we received grants, but his career in both research and administration is short.

He has published a book or two, and has won nothing that I know of, except a nominaton to become head of a bigger organization than Mr. Boorstin's. We do not understand that.

The administration did not see fit to nominate him to be Chairman of the National Endowment for Humanities, which he has already served, an agency with over 240 employees and a budget for administration of $13.5 million, whose sole task is to administer a grant program.

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[1] See p. 246 for Mr. George's prepared statement.

[2] See p. 250 for Ms. Miller's prepared statement.

[3] See p. 256 for Ms. Nelson's prepared statement.

The administration has decided, instead, that he is qualified to head the National Archives, where he has never worked, and which has 3,200 employees, a nongrant administrative budget of $93 million, and immensely more varied, complicated, and sensitive functions. We find it hard to understand that.

The contention by Mr. Agresto that we think the Archivist of the United States must be "one of our own" is also, in our case, not so. Our association does not believe that the Archivist need necessarily be either a trained historian or a career archivist. We do believe that the archivist must have depth of experience in scholarship or administration; must understand the long-term needs of the Archives and must have enough stature to command broad support for what needs to be done.

Dr. Agresto does not have that. The Archives faces enormous problems of storage, conservation, technological change and public accessibility to the documentary heritage of the Nation.

Mr. Agresto speaks of the Archives as if its function were to teach history. Its function is to save priceless Government records. Interpreting them is emphatically not the top job of their chief custodian.

Finally, my members are spread out all over the country. They do grassroots research, using materials in all the branches of the National Archives. They are worried about Dr. Agresto's repeated reference in his testimony here to the material "that is in that building."

The National Archives are not in any one building; they are in 11 regional archives, 14 regional records centers, and 8 operating Presidential Libraries from Boston to Los Angeles, from Atlanta to Seattle, from Chicago to Fort Worth.

We need an Archivist of the United States who does not speak naively about the Archives' educational potential as if he had discovered it. We need an Archivist who understands the great outreach system that the Archives already has, and we beg you and the White House to give us a more sensitive, experienced, and effective leader.

Thank you very much.

Senator STEVENS. Thank you for your cooperation.

Next, Ms. Miller?

Ms. MILLER. Thank you. I am Page Putnam Miller, the director of the National Coordinating Committee for the Promotion of History, an umbrella group consisting of 41 historical and archival organizations. Today, I am speaking specifically for the Organization of American Historians, as Dr. Graebner was unable to be here for this second session.

My remarks today are based on extensive conversations with Dr. Graebner, Dr. Joan Hoff-Wilson, the executive director of the OAH, and Prof. Leon Litwack, the president of the Organization of American Historians and a professor at the University of California, Berkley.

At the April 1986 annual meeting of the OAH, the members passed a resolution opposing the nomination of John Agresto for U.S. Archivist. There are now 16 organizations officially opposing this nomination. Just in this last week, the Southern Historical Association and the Council of the Coordinating Committee for

Women in the Historical Profession joined the list of opposing organizations.

You may ask: Why all this concern about this position? It is because the National Archives is truly a unique institution. The Archives' mission is one of trusteeship, a trust to preserve for the use of future generations those documents, those records documenting the history of this country. It is not a position of advocacy, nor is it one of effecting programs to further the goals of a particular administration.

The National Archives is, by definition and by necessity, neutral, impartial, balanced and professional. It has been in the past, and it must remain so. The Archives houses and administers the records of the executive branch, the judicial branch and the Congress. It is responsible for very sensitive records.

This mass of paper represents some 3 billion pages, and, for the most part, this is governed by a few broadly-based laws, regulations and deeds of gift.

A good deal is left to the discretion of the Archivist of the United States. The job is one of a delicate balance, the right of citizens to know about their Government and the right of individuals to privacy and the legitimate needs of Government forclosure of appropriate records for appropriate periods of time.

How has the balance been carried out so successfully in the past? Why, in all the history of the National Archives, have there been no leaks from sensitive records or from the Nixon materials? Not because the pressures have not been there and are not always there.

Why are we not reading from time to time about unauthorized access to records or privileged access to records or the premature or unauthorized release of records?

Why are we not hearing continuous complaints from researchers that the Archives is withholding some material? We submit it is because the Archives, since its inception in 1934, has been run by impartial professionals whose values were known and whose judgment was respected.

Although there may have been a difference of opinion on a particular call, few if any could or did attack the motivation. This absolute impartiality, this refusal to be swayed by either side, this loyalty solely to professional standards is a hallmark of the Archives and its professional staff.

It was to eliminate these political pressures, or perhaps, as important, the appearance of such pressures, that the independence bill for the National Archives was enacted. This nomination is the last step in that hardfought independence movement.

We urge the committee to carry out what that law envisioned. Finally, in conclusion, I would like to respond to Dr. Agresto's repeated declaration during an earlier part of this hearing that the primary role he would assume as Archivist will be one of teacher, to interpret the history of the United States.

Let me explain to you why it makes historians nervous to hear that the nominee for Archivist sees as his principal job the interpretation of history.

First of all, we worry that if he focuses on interpretation, the real work of the Archives, preservation of documents, the preparation of finding aids, upon which all researchers depend, will be shunted aside. First and foremost, it seems the Archivist should manage the vital work of the National Archives.

But second, we worry about the word "interpretation." As a historian, I know there are many ways to interpret documents. I don't agree with some of my colleagues about the causes of the cold war, for instance, and yet we all work from the same documents.

What kind of interpretation will an Archivist of the United States make and why? Because it is politically fashionable to the White House at that time?

Third, it is the job of the Archives to make available to all researchers on terms of absolutely equal access the research materials they require. When scholars find an Archivist of the United States promoting some particular view of history, they must wonder whether, if they hold a contrary view, they will get the same service as the scholar who agrees with the Archivist. Will they be given the same information about the opening of new records? Will their request for opening of records under FOIA receive the same response? Or, worse still, will the scholars who agree with the Archivist's interpretation be given earlier notices and first access to previously closed materials?

Dr. Agresto says he can interpret and explain the American experience broadly and widely. He says the Archivist has to be a person who can be a teacher, but the OAH strongly disagrees.

The Secretary of Education may be a teacher, but the Archivist of the United States must preserve and make available to others on a totally impartial and unbiased basis the records of the Archives so that others, the research community, may interpret American history.

This is the first appointment of an independent U.S. Archivist. It is intended as one for a lifetime. It establishes the criteria for those who will follow. It determines whether the Archivist will truly remain in office through various administrations, performing professional archival and records management functions insulated from the political orientation of a particular administration.

We urge the committee to oppose the nomination of John Agresto for the position of impartial trustee of the Nation's records.

Senator STEVENS. I am going to have to stop you now. You are well over 5 minutes. We thank you for your statement. Dr. Graebner's statement will be printed in the record in full.[1]

Senator STEVENS. Dr. Nelson?

Ms. NELSON. My name is Anna K. Nelson. I am a member of the American University Department of History. In the last 15 years, I have used the resources of the National Archives Building, every Presidential Library except the Hoover Library, and the National Records Center at Suitland. For the last decade, I have also participated in several studies of government archives and records. Most recently I was Project Director of the privately funded Committee on the Records of Government.

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[1] See p. 347.

I appear before the committee today as a representative of the Society for History in the Federal Government. The society is an organization that brings together historians, archivists, curators, librarians, editors, preservationists, and others who participate in the various historical functions of the Federal Government and who are interested in preserving the professional integrity of these functions. Members of this society are among the most active users of Government records in the country.

Unfortunately, like many other American citizens, administration officials view the Archives as the home of the Constitution, Declaration of Independence, and other historic documents, some of which are useful to a few historians who write lengthy tomes for other historians to read.

Those who have never done research in the National Archives even confuse it with the Library of Congress, since both are Government institutions where people go to find information.

Obviously, any intelligent person with some administrative skills and past or present academic tie could run such an agency.

But the National Archives and Records Administration is more than a final resting place for a few historic documents, and the Archivist of the United States has responsibilities to society that are quite different from those of the Librarian of Congress, because the National Archives has a dual role in our society. It is a cultural agency, and that aspect of it has occupied most of the hearings on the current nominee.

But the National Archives is also an administrative agency with an important mission in the Federal Government. Unlike the Library of Congress, it was not created to hold books, magazines, or even manuscripts. The National Archives was established to preserve the records of the Federal Government.

Both Government officials and citizens often forget the extent to which records serve the Government and serve the public interest. Among other things, records assure accountability to legislatures and the public; they contain information about the management and expenditure of public funds, as well as the course of decisionmaking.

Finally, records do form the basis of our understanding of American Government and history. Behind every public school history textbook are the footnoted books and articles written by scholars who use documents in the National Archives.

So it goes without saying that the next Archivist of the United States should be someone who can both manage a bureaucratic agency and appreciate the cultural contribution of a public archivist. But there is an even more important requirement.

In evaluating a Presidential nominee for this position, the Senate should ensure the continuation of the nonpartisan professional status of the National Archives, and for a reason that has not yet been mentioned before the committee: The records preserved by the National Archives are created by thousands of political appointees and civil servants who staff executive agencies, congressional committees, and the judiciary. The laws that regulate Federal records are, by necessity, self-enforcing statutes.

For 50 years, the professional archivists who have managed this agency have endeavored to earn the trust of politicized agencies through their own nonpartisan professionalism. In order to preserve important documents recording high-level policy decisions and make them available to the public, the National Archives must collect those records. It must convince civil servants and political appointees alike that it is perfectly safe to send highly confidential and controversial records to the Federal Records Centers so that in the distant future, those records might become archives.

If Government officials suspect that the leadership of the National Archives reflects the interests of a particular administration rather than professional neutrality, the result will, no doubt, be a future archive full of the unimportant and the trivial.

In his position at NEH, the nominee illustrated an interest in American history and support for the preservation of the recorded past. Why, then, has his nomination inspired this opposition in the historical community? It is because of a perception that he is thoroughly identified with the partisan politics of the Reagan administration, which he has loyally served. It is this attribute, so valuable to those Presidential appointees who must carry out administration policy, that disqualifies him for this unique position to which he has been nominated.

A nonpartisan professional archive is essential to preserve the integrity of our records and our history. The Archivist of the United States directs the agency that houses the records of all executive agencies and congressional committees; it declassifies documents from the recent past and administers highly political Presidential libraries.

In carrying out the statutory functions, the Archivist and his assistants are continuously faced with countless decisions concerning private interests and public access. Thus, like Caesar's wife, the leadership of the National Archives must be above suspicion.

Documents form the basis of our representative democracy as well as our history. To maintain public trust in our Government and our history, we must not only preserve the intergrity of our public records but the Agency that houses them.

Senator STEVENS. Thank you very much.

Senator Mathias, do you have any questions?

Senator MATHIAS. Thank you, Mr. Chairman.

Let me pose to this panel the same question that I posed to the previous panel, which is: What, to your knowledge, are the practices that govern the selection of principal State archivists? What is the accepted practice, if you know?

Ms. NELSON. Well, over the years, the State archivists have worked very hard to ensure that new State archivists were professional people. It has been a battle, and one of their interests in a professional archivist on the national level is that they often point to the National Archives when they seek to preserve their own professionalism on a State level. Almost all of the major State archives are run by professional historians/archivists or people who have had some experience, I believe, in those fields.

Senator MATHIAS. Mr. George.

Mr. GEORGE. Senator, many State archives are organized under State historical societies or under other departments of government where the archivist is not himself or herself an appointee of the Governor, for example. In the States that I know about, archivists are hired entirely on the basis of professional qualifications and, in fact, Senator, I can't think, just thinking offhand, I can't think of a current State archivist who has fewer qualifications for that job than Mr. Agresto does for this one.

Senator **Mathias**. What do you think, Mr. George, the qualifications of an archivist should be?

Mr. **George**. The primary qualification that we really need right now is someone who can generate broad leadership. The Archives has problems to face; it has new challenges in the future, such things as machine-readable records and so forth.

We need somebody who can really generate support widely from the Congress, the user community, and the public. That requires having qualifications that command respect, either in scholarship, in archival administration or depth of experience in the administration of a major cultural organization.

I would say that those are the principal, the real qualifications that the Archivist needs now.

Senator **Mathias**. You feel that Mr. Agresto is lacking in those qualities?

Mr. **George**. As I said in my testimony, I have personal regard and respect for him, but I do not believe he has those qualifications.

Senator **Mathias**. What did you expect, under the new law, to be the process for the selection of an Archivist, any one of you?

Ms. **Miller**. We worked long and hard for that legislation, and we realize that a key part of the whole reason for the legislation was because GSA was and is perceived as being a political arena, and it was the desire to remove the National Archives from GSA. As part of the conference report, as you recall, there is language about insulating the Archivist from a particular administration. So we had assumed that depoliticizing the Archives was a key part of the legislation and the process, and we had hoped that the user groups would be consulted by White House personnel; we would have liked very much if there had been a blue ribon panel similar to the one that Rabbi Stern served on with the selection of Bob Warner.

But if there had been a national search with a very competitive process, we would have been quite pleased with that.

Mr. **George**. I think I frankly expected that the White House would forward a nominee who had direct experience with archival administration or was a very distinguished historian who was familiar with the uses of archives.

Senator **Mathias**. You mentioned the challenges you foresaw for the future, new kinds of records, electronic records as well as the mountains of papers that are already accumulated. I don't know what Senator Eagleton's experience is, but my expereience was that when we weighed up the papers accumulated in my office over 26 years, it came to something over 6 tons.

Ms. **Nelson**. Senator, one of the problems with electronic records is that the next time a Senator weights up after 26 years, it may come out to zero, because there are buttons on computers that destroy records so quickly. So one of the major problems facing the National Archives these days is dealing with both the mountains of paper and also dealing with a Federal executive that is turning more and more and more to electronic records, to interoffice use of computers, and somewhere along the way, the National Archives has to become a different kind of institution so that it can get into the business of dealing with Government agencies on a much closer basis.

The next Archivist should be somebody who can exert leadership in a very fragemented records management system where the General Services Administration has some authority over records, OMB has some authority over records, and the National Archives has some authority over records, and this means that the Archivist must be a person who knows a good deal about Federal records and can exert leadership or else National Archives will, in effect, become a minor player.

Senator MATHIAS. And not only the records, the original copies of the Declaration of Independence and the Constitution, but the ongoing records which are being manufactured by new and different methods almost week by week.

Ms. NELSON. Well, it was rather startling to sit through the hearing in August and find the emphasis on the records of the Founding Fathers, which are beautifully kept and which everyone, I think, has tremendous respect for.

The problem is that some of us who do modern research have tremendous problems with the budget cuts and with other factors. Now, in another 10 or 15 years, we will have to start doing research on electronic records. They have been used in the State Department for example since the mid-seventies.

I think that there needs to be a tremendous amount of leadership here and also a tremendous capacity to understand what has to be done and redone. So for some of us, when we saw the Independence Legislation, to go back to your question, we hoped for two things: One, getting the job out from under GSA, so that some very outstanding people who might not have wanted it before would accept the position of archivist and two, since the nomination required the consent of the Senate, that the Senate would pay very close attention to the job and what it meant, and it would be a safeguard to the Archives.

Senator MATHIAS. Thank you very much, Dr. Nelson, Ms. Miller, and Mr. George.

Senator STEVENS. Thank you very much.

Senator Eagleton.

Senator EAGLETON. I have no questions.

Senator STEVENS. I appreciate your appearance very much, and I thank you for coming.

Our last witness, to my knowledge, in the room, is Mr. Thomas Mann. Is Mr. Mann here?

Mr. MANN. Yes; I am.

Senator STEVENS. To my knowledge, you are the last witness from the panel to be called. Would you come forward, please?

TESTIMONY OF THOMAS E. MANN, EXECUTIVE DIRECTOR AMERICAN POLITICAL SCIENCE ASSOCIATION [1]

Mr. MANN. Senator, I appreciate the opportunity to appear today. I thought, in fact, I would appear tomorrow, but I am delighted to be able to do it today. My name is Thomas Mann. I am the Executive Director of the American Political Science Association. I appear before your committee today, however, as an individual political scientist and not as a representative of my association, which, as is its custom, has taken no position on the nomination of John Agresto as Archivist.

I have listened to the testimony on August 13 and today, and I find myself holding to the same views that I presented in a statement that I submitted to your committee on August 13.

Basically, I support his nomination as Archivist based on three primary considerations: One has to do with his professional qualifications; and second has to do with his personal qualities; and the third has to do with his conception of the job of Archivist and the kind of Archivist I think he would be based upon my knowledge of his professional and personal qualities.

On the professional grounds, I have heard John Agresto's stature as a scholar denegrated. I just don't think that denegration is justified. He has an impressive scholarly background in political science, a discipline vitally concerned with the operation of the National Archives.

I might note that the late Professor Clement Voss, political scientist at Wesleyan University, was Chairman of the National Advisory Council of the National Archives, and a leading force in the community for the preservation of a healthy archives.

John's scholarship, notably his book, "The Supreme Court and Constitutional Democracy," commands the professional respect of leading scholars in the field of public law and political philosophy. I have read his book; I have read his articles, but I didn't rely on my own judgment on this. I called leading experts in political science and public law, and I said, "Tell me about his scholarship. Is he a serious scholar? Is he an ideologue as being portrayed by the opponents?"

The judgment I got from the best people in our field is that he is a serious man engaged in serious scholarship in public law and political philosophy.

I believe his particular scholarly interest in the founding period, in the American constitutional system, lead naturally to an appreciation of the special importance of basic documents and primary source materials.

Second, I believe Mr. Agresto is qualified by virtue of his administrative experience. I will tell you, I don't know of another academic who could come before you as the nominee of the President to be U.S. Archivist with comparable administrative experience. I mean, the best we probably can do is to be a Chair of a political science department or a department of history with 20 faculty members.

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[1] See p. 261 for Mr. Mann's prepared statement.

This is a man who has had now 4 years of high-level administrative experience in a Federal agency, the NEH, whose mission is so closely tied to that of the National Archives.

Based on my personal observations and the accounts of others, Agresto performed ably and successfully in his post as Assistant Chairman, Deputy Chairman, and Acting Chairman of NEH.

I then turned to Agresto's personal qualities, and in the end, Mr. Chairman and members of the Committee, your decision will really have to turn on, I think, your assessment of the character of the man that has been put before you. I know him to be intelligent, honest, and sensible. He is a principled man, yet he displays no trace of self-righteousness or ideological fervor. In fact, Agresto embodies those particular American civic virtues of accommodation and moderation about which he often writes.

In my dealings with him, I have found him to be fair-minded and tolerant of diverse intellectual approaches and political views.

The third consideration underlying my support of Agresto's nomination is his conception of the job of Archivist. As I understand it, he is determined to increase the visibility of the National Archives and the use of its materials by scholars and the public. In a recent speech to the New York State Archives Conference, he spoke eloquently on the importance of documentary preservation and widespread public access for the health of our democratic system.

It seems to me Mr. Agresto, without the background in archival administration, can and certainly will hire the technical expertise he needs to make decisions on complicated questions that come before him, but his vision of the place of the National Archives in the larger scheme of things offers an exciting future for the Archives that might not have occurred to a career archivist.

Let me conclude by underscoring one important aspect of Agresto's conception of the job. The American Politican Science Association has a long history of efforts to enhance access to Presidential papers. Over a decade ago, we worked with the American Historical Association to enjoin President Nixon from taking private possession of his Presidential papers and tapes. I played a small role in our Association's decision to become a litigant in that case.

Since then, I have maintained an active interest in achieving public and scholarly access to the Nixon materials. In my view, the legal opinion issued by Mr. Cooper that sitting presidents should honor claims of executive privilege made by their predecessors "without judging the validity of the claim" clearly violates the intent of Congress in passing the Presidential Records Act.

Senator STEVENS. Mr. Mann, I am sorry. I am going to have to close down your time.

Mr. MANN. Sure.

Senator STEVENS. Summarize your conclusion, please.

Mr. MANN. Yes; if I had any doubt about Mr. Agresto's commitment to public access to Presidential papers or his resolve in resisting Cooper's opinion, I could not support his nomination.

In fact, I have no doubt of his commitment to fight to protect the interests of the public and of the scholarly community.

On these grounds, I support the nomination of John Agresto as Archivist of the United States. Thank you very much.

Senator STEVENS. Thank you.

Senator Mathias, any questions?

Senator **Mathias**. Yes; thank you, Mr. Chairman.

Mr. Mann, you said that you base your judgment of Mr. Agresto on observation. What has been your experience with Mr. Agresto? Have you ever applied to him for a grant? Have you ever applied to him for professional assistance?

Mr. **Mann**. I met Mr. Agresto when I first went to the NEH when Mr. Bennett was chairman with another member of my staff to interview Bennett and Agresto on the place of political science within the National Endowment for the Humanities.

It was my first meeting, first contact with him. The question had to do with the role of the social sciences in the NEH. Since that time, I have seen him in public gatherings, at meetings of the American Political Science Association, the American Council of Learned Societies. APSA, Senator Mathias, has joined with the American Historical Association to form Project '87, a commemoration of the Bicentennial of the Constitution, I think with which you are quite familiar.

AHA and APSA have, beginning before Mr. Bennett's tenure and continuing after his departure and Agresto's, and now to Dr. Cheney's, received support to publish a magazine called This Constitution and programs of support for college and high school teachers to learn about the Constitution.

I haven't had any dealings with him because the staff of Project '87 has dealt with those matters, but, in fact, AHA and APSA have involvement with the NEH in that respect.

Senator **Mathias**. So you have found him, both in connection with Project '87, and in connection with the opening of NEH to political scientists, as being very forthcoming?

Mr. **Mann**. That's right. I have found him fairminded. I served on some panels, as well. I have looked to see if people of diverse ideological viewpoints have been funded at NEH, and I looked to see if there were complaints about political bias in the administration of the agency.

I looked carefully at that, and I found, in fact, there were no such compliants in our community. I looked to see him take a role to stress the importance of the humanities within our profession at our meetings. In every setting, I have been impressed by his moderation, his fairmindedness, his general seriousness, and good sense.

Senator **Mathias**. You mentioned the Nixon materials. Did you discuss them directly with Dr. Agresto?

Mr. **Mann**. Yes. I told Mr. Agresto; I didn't discuss them. He wouldn't discuss them with me, but I told him my view about the opinion and about the importance of public access, and he said it was inappropriate for him at this point to talk about them specifically.

Therefore, I base my judgments of how he would act on more general statements he has made before this nomination came up, and my judgment of the character of the individual. I also stressed to him the importance that the political science profession placed on open and full access to Presidential materials and how we would fight with any U.S. Archivist who didn't work to protect that access.

Senator **Mathias**. What about his record, say, on the subject of Affirmative Action, though?

Mr. **Mann**. This is my view on that: I disagree personally with John's view on goals and timetables. But I take his position to be a serious and honorable position, and what was important to me is that: One, he be perfectly open and above board about what that position is; and two, when the Congress took action to demand implementation of goals and timetables in the reauthorization legislation, he followed the legislation.

So I see him as: One, a principled man, adopting a position that I don't personally agree with, but I don't believe it is appropriate to apply a litany of tests of this sort. Reasonable, honorable people can disagree on this matter.

Senator **Mathias**. Would his general approach to that subject have any bearing on how you felt he might handle the Nixon papers controversy? In other words, it is my understanding that he has said that he will not abide by an interpretative memorandum of public access regulations on the Nixon materials; is that correct?

Mr. **Mann**. That was the impression I got from the statement he read here on August 13.

Senator **Mathias**. Is that different from your own personal understanding and hope and expectation?

Mr. **Mann**. No. To the contrary, I thought the statement addressed and made before this committee last month was the strongest and most forthright statement we have had on the importance of the independence of the Archivist, and the inappropriateness of the Justice Department opinion.

In fact, I had looked for a similar statement from the Acting Archivist. In fact, for whatever reasons necessitated it, I saw an agreement from a professional archivist to abide by the decision of the Justice Department.

Agresto, as far as I know, is the only person who has come before your committee, and that is being considered for Archivist, officially from, if you will, the Archives, who said that the opinion is inappropriate and violates the intent of Congress.

So, given my position and the position of the political science community on the importance of access to Presidential papers, I was heartened by Mr. Agresto's statement before this committee last month. It should put to rest many of the concerns expressed by my colleagues in the historical and archival communities about the independence of the Archives under Mr. Agresto.

I thought that was a rather courageous and forthright statement.

Senator **Mathias**. But he did rely on the views of the Justice Department when he refused to submit the affirmative action goals and timetables.

Mr. **Mann**. There, as I understand it, he had a principled position on goals and timetables. He worked, as he indicated in his testimony, to meet the substance of the directive, that is to say, to increase the hiring of women and minorities, with some notable success, but he had a strong principled position on goals and timetables, and in his judgment, that position was permitted under the law.

When Congress made it absolutely clear it was not permitted, he agreed to administer those provisions as required.

In this case, as I understand it, Agresto has a clear position on the importance of the Archivist having an important role in the disposition of the Presidential materials from the Nixon administration, and if so, there is little that I see comparable.

Senator MATHIAS. One last question: In your statement, you say, and I am quoting you, that you refer to his vision to place the National Archives in the "larger scheme of things offers an exciting future for the Archives that might not have occurred to a career archivist."

The conference report on the independence legislation stated that the Archivist should, and I am quoting,—"be an officer performing professional archival and records management functions."

Maybe the two can be reconciled, but I am just wondering.

Mr. MANN. Sure. My view is that the two aren't incompatible at all. In fact, in listening to the testimony before me this afternoon, I sensed some element of narrowness about precisely what it is that the head of the Archives will be doing every hour of his or her administration. It seems to me it is quite possible and appropriate and needed to be a dynamic, vigorous leader of the National Archives, representing the Archives here on the Hill and in Washington and in the country, to try to generate some sense of excitement, to attract more resources, all the while seeing to the professional management of that agency and the very important matters that it deals with.

I would hope that the next Archivist of the United States is capable of doing both of those things.

Senator MATHIAS. Thank you, Mr. Mann.

Mr. Chairman, let me just inquire, because you said Mr. Mann was the last witness for the day. Dr. Flemming, I think, was on the list; Althea Simmons is on the list. I wonder when you thought they would be called.

Senator STEVENS. If they are here, I would be glad to hear them.

Senator MATHIAS. I don't believe they are here. I think Dr. Flemming had been expecting to testify tomorrow.

Senator STEVENS. I think someone put down a hearing possibility for tomorrow, but I have a conflict with Appropriations. I am trying to get someone to chair the hearings. If the Senator wishes to chair the hearing, I will be happy to yield to him. It is the full committee.

Senator MATHIAS. My problem is I have got the impeachment panel tomorrow.

Senator STEVENS. I know Dr. Flemming well, but I have to work on the defense bill tomorrow.

Senator MATHIAS. I just don't want to miss his testimony.

Senator STEVENS. I will have to inquire of the chairman what he intends to do. I would be happy to respond to the Senator then.

Senator MATHIAS. I would be glad to fill in at the earliest possible date, but I think it is unwise for me to plan to do it tomorrow given the problems.

Senator STEVENS. I appreciate your problems.

Senator Eagleton, do you have questions?

Senator EAGLETON. Yes, I do, Mr. Chairman. Thank you.

Mr. Mann, in your prepared statement or your introductory remarks, you made the statement that there is no other available academic of comparable administrative experience. Do you actually believe that asinine statement?

Mr. MANN. I said few scholars can match his record of administrative experience. It is hard for me to——

Senator EAGLETON. You were extemporizing when you got to that point.

Mr. MANN. I got carried away a little bit.

Senator EAGLETON. I submit it was mentioned. Dr. Arthur Flemming, who otherwise would have testified today, he is an academic. Don't you think Dr. Flemming has had greater administrative experience than the nominee?

Mr. MANN. Yes, he has had more substantive experience.

Senator EAGLETON. Have you ever heard of Kingman Brewster?

Mr. MANN. Oh, yes.

Senator EAGLETON. Would you say he has had broad administrative experience, in fact, broader than Mr. Agresto's Deputy job over at a tribe of 200?

Mr. MANN. Yes.

Senator EAGLETON. Have you heard of Henry Kissinger, another academic, who ran the U.S. State Department for several years?

Mr. MANN. Yes, but at the time Dr. Kissinger was appointed to the Government, he came as an academic without having administered anything.

Senator EAGLETON. He came as the National Security Adviser.

Mr. MANN. Yes.

Senator EAGLETON. Your testimony is grandiose and extreme. Are you testifying for yourself or are you testifying for your association or both?

Mr. MANN. For myself.

Senator EAGLETON. Oh, you are not testifying for the American Political Science Association.

Mr. MANN. No, sir.

Senator EAGLETON. It says down here Thomas Mann, executive director, American Political Science Association. That is just identifying you, who you are; you are not a spokesman for the American Political Science Association with respect to this matter?

Mr. MANN. As the third sentence of my testimony stated, Senator, yes, that's correct.

Senator EAGLETON. Are you a friend of Mr. Agresto?

Mr. MANN. I now feel I am a friend, yes.

Senator EAGLETON. Three times in your testimony you referred to him as "John" or "John's". So you are testifying as a friend. You are not testifying for the association; you are testifying as Thomas Mann, friend of John or John's friend.

Mr. MANN. Right.

Senator EAGLETON. Is your wife named Sheilah Mann?

Mr. MANN. Yes.

Senator EAGLETON. Is she the project manager for Project 1987, the Constitution project that you mentioned?

Mr. MANN. Yes.

Senator EAGLETON. Is Project 1987, directed by your wife, the recipient of funds from NEH?

Mr. MANN. Yes.

Senator EAGLETON. How many dollars?

Mr. MANN. Well, there have been grants to the American Historical Association, which is one of the organizations opposing this nomination, and to the American Political Science Association.

Senator EAGLETON. Fine, and there have been grants to your wife's association?

Mr. MANN. No, my wife has no organization. Project 1987——

Senator EAGLETON. Isn't she project manager of Project 1987?

Mr. MANN. Yes.

Senator EAGLETON. How many dollars in grants has your wife's project received from NEH, from Mr. Agresto as the chief honcho?[1]

Mr. MANN. Project 1987 has received grants to support the magazine called This Constitution, a Bicentennial Chronicle; the amount, I think, was $350,000. It has been published since 1985, I believe the first issue came out in late 1983, and been published through this year and will conclude at the end of 1987.

There have also been probably about $150,000 or $200,000 for seminars for college teachers and for a television series at the University of Maryland.

Senator EAGLETON. Have you ever participated in social engagements with John?

Mr. MANN. Once.

Senator EAGLETON. Are you aware of the statute that sets up the position of Archivist?

Mr. MANN. Yes.

Senator EAGLETON. I will read an excerpt: "The Archivist shall be appointed without regard to political affiliation and solely on the basis of professional qualifications required to perform the duties and responsibilities of the Office of Archivist."

Are those words, do you recall those?

Mr. MANN. I certainly do, Senator.

Senator EAGLETON. Do you remember writing a letter to Lynn Ross Wood on January 28, 1985? This Lynn Ross Wood is the Assistant Director of Personnel at the White House.

Mr. MANN. Yes, I do.

Senator EAGLETON. Do you remember writing it on the stationery of the American Political Science Association?

Mr. MANN. Yes.

Senator EAGLETON. In that letter, did you state that you were writing for yourself personally and not on behalf of the association?

Mr. MANN. I don't recall, but I don't think so.

Senator EAGLETON. You did not, right?

Mr. MANN. Yes.

Senator EAGLETON. Would a normal inference be, if you received a letter on stationary of the American Political Science Association, signed by the executive director, where the recipient had the right to conclude that that was a letter on behalf of the association?

Mr. MANN. No, sir, not at all. I write many letters of recommendation for people seeking jobs in the Congress of the United States, on congressional committees, in the executive branch, for professors seeking tenure and promotion. I do it as an individual political scientist and I use the letterhead of the APSA.

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[1] NEH grants to Project '87 may be found on p. 581.

Senator EAGLETON. Why don't you write it on the letterhead of your own stationery?

Mr. MANN. Because it is common practice in the academic world to use one's institution's letterhead. If a professor from Yale University writes a letter, they do the same thing.

Senator EAGLETON. You have used the letterhead of the American Political Science Association, and you have abused it.

Now, referring back to the statute that you are familiar with and which you know about, in the letter to Lynn Ross Wood at the White House, she is the Personnel Director. You say, "John is clearly comfortable with the substantive goals of President Reagan. John—"his first name, a friend of yours," John is clearly comfortable with the substantive goals of President Reagan."

What does that have to do with the statute that I just read? Indeed, is it in conflict with the thrust of the statute that I just read?

Mr. MANN. Yes, there is no—I can see the point. According to that statute, the substantive goals of the Reagan administration are not part of the job description.

Senator EAGLETON. That is right.

Mr. MANN. Right.

Senator EAGLETON. Then you go on to say, "His views—" that is, John's "are consistent with those of his boss, William Bennett—" Guilty on that same count, right, doesn't jibe with the statute? The statute doesn't talk about affiliation and comfortable with goals and what-have-you; the statute says you have to be qualified and competent in the profession.

But here you are, Thomas E. Mann, director of the American Political Science Association, a prestigious organization, writing on the letterhead of the organization and talking about your friend John and his political qualifications and his philosophical qualifications to jibe with the Reagan administration. Very professional on your part to write this?

Mr. MANN. Oh, what I did, I think, was perfectly appropriate, Senator.

Senator EAGLETON. Professional?

Mr. MANN. Yes.

Senator EAGLETON. Professional.

Mr. MANN. You asked me quite a different question about the connection between the language of the statute and this statement. That is quite different. I think it is quite professional, yes, sir.

Senator EAGLETON. The statute says what it says. We took the Archivist out of GSA to depoliticize it, and your are writing on the letterhead of your association telling Ms. Lynn Ross Wood about how comfortable John is with the substantive goals of the Reagan administration. Hasn't that just got a little tinge of politics?

Mr. MANN. You might just follow the rest of the paragraph to see the point that I was getting at.

Senator EAGLETON. All right. Well, I ask unanimous consent to put the entire letter in the record. I will read the full last paragraph. OK?

Senator STEVENS. What is the source of that letter?

Senator **Eagleton**. Mr. Agresto gave it to us as one of his most prized possessions.

Now, this is the last paragaph. "This leads me to offer a personal perspective on Dr. Agresto. John is clearly comfortable with the substantial goals of President Reagan. His views are consistent with those of his boss, William Bennett. What John has demonstrated—"there is John again, "What John has demonstrated is an uncanny ability to carry out those goals, although in sometimes a suspicious or even hostile community, all the while earning their respect, not enmity. In other words, he has the personal and political skills to go with his keen intelligence. John would make a fine Archivist, and I am pleased to recommend him to you. Signed Thomas E. Mann, Executive Director, American Political Science Association," also, husband of Sheilah Mann, grant recipient from Agresto's shop and personal friend of John Agresto.

I think the testimony of Mr. Mann stands for what it is worth.

Senator **Stevens**. Mr. Mann, be advised not to write to any personnel officers in the White House and suggest someone who is not supportive of that President's point of view and who does not have the support of his boss. That is just a little personal advice from me.

If you had not written your letter in the way you did your nominee wouldn't get where he is today. I think your letter served its purpose, and we are pleased to have your testimony. Thank you very much.

Mr. **Mann**. Thank you very much.

[The letter referred to follows:]

The American Political
Science Association,
Washington, DC, January 28, 1985.

Mrs. Lynn Ross Wood,
Assistant Director of Personnel,
The White House,
Washington, DC.

Dear Ms. Wood: I write to offer my recommendation of John Agresto, who is being considered for the position of United States Archivist.

On professional grounds, I can assure you that John is a first-rate political scientist, respected by his colleagues for the quality of his scholarship and for his intergrity in upholding the time-honored values of the academic community. He has enhanced that reputation in what might have been, for a less able administrator, a controversial assignment at NEH.

This leads me to offer a personal perspective on his candidacy. John is clearly comfortable with the substantive goals of President Reagan; his views are consistent with those of his boss, William Bennett. What John has demonstrated is an uncanny ability to carry out those goals among sometimes suspicious or even hostile communities, all the while earning their respect, not emnity. In other words, he has the personal, political skills to go with his keen intelligence.

John would make a fine Archivist and I am pleased to recommend him to you.

Sincerely,

Thomas E. Mann,
Executive Director.

Senator **Stevens**. We are now ready for the testimony of Dr. Agresto. Senator Mathias will return in a few moments.

Senator **Eagleton**. All right, Mr. Agresto. During the last hearing, I asked how your background and experience fits with the statutory language and the wording of the conference report in the appointment of the Archivist.

You were seated there. I read the statutory language to Mr. Mann. Also at the last hearing, I think I read the conference report language that said, just to refresh and have it in the record, "The conferees intend that the Archivist be an officer performing professional archival and records management functions insulated from the political orientation of a particular administration."

Now I would like to read into the record, and then I will ask my question, a statement made by the bill creating the Office of Archivist. The floor manager's statement in the law of statutory construction carries great weight. Indeed, it carries greater weight than the statement of any other Senator on the floor, the presumption as being the floor manager of the bill, he is the most expert and knowledgeable of the bill, and the floor manager of the bill was Chairman Roth, Senator William Roth, the chairman of this committee. He said as follows, "The conference agreement recognizes the need for the Archivist to be a dedicated professional in the field of archival matters, the treatment of historical records and in records management procedures."

May I ask you, are you a professional in the field of archival matters, the treatment of historical records and in records management procedures?

TESTIMONY OF JOHN AGRESTO, NOMINEE TO BE ARCHIVIST OF THE UNITED STATES

Mr. AGRESTO. Yes, Senator, I would say that I am.

Senator EAGLETON. You are.

Mr. AGRESTO. Yes.

Senator EAGLETON. Tell us how you are.

Mr. AGRESTO. I gave a sketch last time, and I would be happy to fill it in this time. I would like to cover the kind of work I have done while I have been at the National Endowment for the Humanities and the kind of historical, scholarly work I have done as an academic and researcher and writer.

One thing we have done at the NEH that I want to talk about and that I am proud of, and that the President is proud of, as well—and I think this is one of the policies he certainly supports—is we have started a $4 million a year program for the preservation of books, texts, documents, and records at the NEH.

That is $4 million not counting the money we put in each year in the documentary editions. That includes money that we oversee for archival collections, for travel to archival collections, and for the whole U.S. newspaper project that we are running in coordination with the Library of Congress that seeks to preserve all of the newspapers going back to the 17th century, the last part of the 17th century, in this country.

We have worked on the preservation of books. We have worked with the Council on Library Resources to save 3 million titles from disintegration over the next 20 years.

We have helped put together a film on preservation of documents with the Library of Congress. We have put together graduate training programs in archives and archival science. In documentary educations, we have supported the papers of Martin Luther King, Booker T. Washington, John C. Calhoun, Jane

Addams; the list is very long. The kind of work I have done at the NEH is directly appropriate, directly apposite to the kind of work being done by the Archivist.

I have to say, however, that as I said in my opening statement last time and in my testimony last time, that the duties of the Archivist, of the Archivist of the United States, are surely greater than essentially filing and cataloging.

What we need, and what I hope to be, is as active and energetic a scholar as a person can be at the Archives, a person that would represent the Archives and represent the wealth that is in the Archives to the American people.

I have spoken, if you want to know my views on archival matters, I have spoken before archival groups, before preservation groups. In the large packet of materials I sent you, you have one of my last speeches which the Library of Congress is about to publish on the need for preservation—documentary preservation, text preservation, and records preservation in this country. That was a speech, I think, that Senator Simon quoted at length from when he introduced me last week.

May I continue?

Senator EAGLETON. Well, if you can finish by 5 o'clock.

Senator STEVENS. Pardon me. Could I interrupt? I am about to leave. I would like to put into the record, following the material I previously put in the record, a review from the Journal of Politics concerning books and articles written by the nominee.[1]

Mr. AGRESTO. What we have done at the Agency that has been absolutely valuable and absolutely necessary is that we have—I think probably more than anyone else in the last few years—highlighted some of the archival problems in this country. Certainly, we have highlighted the problems of preservation, of documentary and text preservation.

I recently ran across a statement made by Professor Jameson, who was director of the American Historical Association, one of the leading founders of the Archives 50 years ago. This is the letter he wrote to President Roosevelt regarding the candidate then.

> While the executive committee of the American Historial Society has proper emphasis on successful experience in archival work, it is well aware that the business of being the first Archivist of the United States is an administrative employment, one requiring the combination of organizing power and personal tact. In recommending Professor Connor, they have chiefly in mind the fact that he is a man of great administrative capacity, a man of force and character who would wish and would be able to place the institution on a high level and maintain it there, a man of affairs and action, employable in agreeable ways.

Going back to the beginning, I think it was understood that the Archivist of the United States, while he was surrounded by competent and talented administrators, competent and talented archivists, should also be someone who has some vision of what the Archives can be, sir.

Senator EAGLETON. At the outset of your answer, you predicated your answer on your service as Acting Chairman and then the long answer ensured therefrom.

When did you become Acting Chair?

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[1] See p. 516. Additional reviews may be found starting on p. 519.

Mr. AGRESTO. Excuse me?

Senator EAGLETON. At the outset, at the very outset of your rather lengthy answer, you predicated your answer on your duties as the Acting Chairman of the NEH and then the answer flowed therefrom. When did you become Acting Chairman?

Mr. AGRESTO. I became Acting Chairman in February 1985.

Senator EAGLETON. February 7, to be exact, 1985. When did you start seeking the Office of Archivist?

Mr. AGRESTO. My attention was first brought to it a few months before that, sir.

Senator EAGLETON. So you were aware of it, and weren't you in pursuit of it?

Mr. AGRESTO. When I was asked if I wanted to be considered, I said, "Yes, I would love to be considered."

Senator EAGLETON. So when you were aware of it and wanted to pursue it, you hadn't been Acting Chairman with all of this instantaneous archival experience that you acquired. Indeed, Mr. Mann, the previous witness, he is writing that Lynn Ross Wood in January 1985 saying, "I think John is comfortable with the substantive goals of President Reagan."

So before you became an instant archivist, you were already seeking to become Archivist.

Mr. AGRESTO. Before I became Acting Chairman?

Senator EAGLETON. That is right.

Mr. AGRESTO. I was asked if I were interested, and I definitely was interested. Many of the programs I mentioned and highlighted certainly predate 1985. The U.S. Newspaper Project has been going on for a number of years, for example.

Senator EAGLETON. You said at the last hearing that duties of the Office of Archivist are not just cataloging, that is quote, "accession and filing"; "records management"; you said that the Archivist also has "far and wide-ranging external obligations, as well. The Archivist has to represent the Archives. He has to represent the material that is in those Archives. He gets to make sense of the history of the Archives. He gets to make sense of the history of the Archives to the American people."

Do you remember saying that?

It is from the transcript.

Mr. AGRESTO. Yes. I said that.

Senator EAGLETON. Then later you said, "If I had to put down one thing I can do and will do as the Archivist, if I am confirmed, is I will work with that collection and work with the teachers and with students and with the general public and with the media to see to it that my understanding, our understanding of the greatness of that heritage becomes a public legacy."

I am still troubled by the emphasis that you place on the "teaching role" of the Archivist.

The Archivist is not intended, is he, to be the official historian of the United States? The statute that I quoted earlier and such conceptions there makes no mention of such a role. The Archivist should not be an interpreter of our country's history or the Constitution or any other document. Do you agree?

Mr. AGRESTO. I don't remember using the word "interpreter," but I might have. What I did use, however, and what I will be happy to repeat is that the Archivist should help bring together scholars, bring educational groups and bring teachers, and help educate the American people through these groups as to the greatness of the history and heritage of this country.

I think that is a major obligation of the Archivist. I would hope through it that I could make people understand that a lot more than the Constitution is there. It contains material going back to the records of the Continental Congress, all the way up through the latest of the Rogers Commission on the *Challenger* accident. They too are the Archives.

I would like to educate the people as to the greatness of our history that is contained in all these archives.

The Archives has an obligation to present that history, to make it clear, to make it accessible, to make it available. They do this through finding aids, and they do it through such things as exhibitions and reprints and highlights and journals.

I would hate to have that all labeled interpretive although it might be. But that is what the Archives does.

The Archives does put out journals and makes exhibitions and reprints and so on.

Senator EAGLETON. From time to time in this hearing, the analogy, the presumed analogy has been made to the appointment of Dan Boorstin to be Librarian of Congress. I am not so certain that the analogy applies. First of all, are you familiar with the statute that governs the appointment of the Librarian of Congress?

Mr. AGRESTO. No, I am not familiar with that statute.

Senator EAGLETON. Well, I will read you a portion thereof. It is section 136, 2 U.S.C., and that statute makes no mention of any things as professional qualifications. It states no prohibition or anything about political affiliations.

In fact, all it deals with is the posting of a bond, the old statute, but that is all it deals with. It doesn't talk about professional qualifications, depolitization. It is in very sharp contrast to the statute that sets up the Office of Archivist, that statute you are familiar with. We have already gone through that.

Mr. AGRESTO. I am, yes.

Senator EAGLETON. So anyway, that is one very clear distinction, statutorily. The second and I will just read this for the record:

> Dan Boorstin was a Rhodes Scholar, won a double first in two degrees in Law at Oxford; has written over 10 books; has won the Bancroft Prize, the Parkman Prize, the Pulitzer Prize and the Dexter Prize. He edited the Chicago History of American Civilization, a 30-volume series, and was the American History Editor of the Encyclopedia Britanica. He taught at Harvard, Chicago, Swarthmore College, Oxford, Cambridge and the Sorbonne, where he was the first incumbent of the Chair of American History. He has also taught at the University of Rome, and the University of Geneva. Before his nomination, Mr. Boorstin was Director of the National Museum of History and Technology, and a Senior Historian at the Smithsonian Institution.

Is it fair to say that Mr. Boorstin's intellectual and experience pedigree is uniquely excellent?

Mr. AGRESTO. Mr. Boorstin is an intellectual and academic giant, sir.

Senator EAGLETON. My last couple of questions, if Sentor Levin will bear with me. As I mentioned, the Archivist statute states that, the Archivist is to be appointed without regard to political affiliations. What if the White House Personnel Office were to administer a political test to persons considered for this nomination? Would that repulse you?

Mr. AGRESTO. It certainly didn't happen to me, and I think it would be wrong.

Senator EAGLETON. Would you think that if the White House Personnel Office inquired into political affiliations and political matters, it would be in violation of the terms of the statute?

Mr. AGRESTO. Well, I must say that when I met with Mr. Tuttle, Mr. Tuttle did ask me if I supported the President in 1980 with contributions, and I said that I did not. I gave the same impression to him as Senator Durenberger got the last time, as a "cheapskate," I guess.

Senator LEVIN. A what?

Mr. AGRESTO. I gave him the same impression that I guess Senator Durenberger got: That I was a cheapskate. I did not contribute to the campaign.

He asked me if I made any speeches for President Reagan in 1984. I said no, I had not. I had voluntarily hatched myself when I came to the agency. I voluntarily hatched myself as deputy chairman, and I am still hatched; and I did not make any speeches on behalf of the President, and that was about the extent of those questions—no more questions than I got from the committee—than I had in the forms to fill out for this committee.

Senator EAGLETON. What would you think as an academician and as one who voluntarily hatched himself and went to NEH, what would you think if the White House Personnel Office asked other potential appointees for their position as to their political practices? Would that be in egregious conflict with this Archivist statute?

Mr. AGRESTO. If their objective was to find someone who was a political supporter or partisan or that would support their positions, then that would not be correct; they should not do that.

Senator EAGLETON. I mentioned at the last hearing that at least one distinguished Archivist had been subjected to such a political test, and I said at the time that a letter from this individual is on its way, and I think I even asked back then that it be placed in the record, so I guess it is already in there. The letter has arrived, and it is quite disturbing. It reveals that this archivist was asked about his party registration; whether he contributed to Republican candidates; whether he would accept political referrals from the White House for jobs in the Archives. This individual includes in his letter:

> In summary, I was asked frankly political questions as well as professional questons. I was, in general, treated with courtesy. They subsequently checked up on me politically, and obviously, I did not pass their political tests.

This occurrence would be troublesome enough if it were an isolated case, but the committee staff has been told by others who were interviewed that they were asked the same sorts of political questions. Unfortunately, these other interviewees do not want to come forward publicly.

I have repeatedly quoted the statute: "solely on the basis of professional qualifications, without regard to political affiliations." I can't understand what meaning that statute has, especially in the context that we were taking the Archives out of the most politicized agency of the Federal Government, that is the GSA.

We wanted to take it out of that. I can't understand in the light of all that—the history of the statute itself, the floor statements on the floor of the Senate when it was passed—how there can be political tests.

Let's read a couple of answers to this questionnaire that was sent out by Senator Mathias and myself.

> Where you asked what your political party registration was?
>
> Yes, I answered Democrat. Mr. Tuttle asked if I was appointed by the Democratic Governor of my State. I said that I was appointed on the basis of merit by a Commissioner who was appointed by the Governor. I was not, however, a Civil Service employee. He asked why I registered Democrat. I had two significant Republican references. I said that my position was not Civil Service protected and that it was my opinion that it was wise to register Democrat. Mr. Tuttle winced, and then asked if I had contributed to the campaigns of Republican candidates. I said that I had.
>
> Question. Were you asked what your response as Archivist would be to referrals by the White House of political appointees for positions at the National Archives?
>
> Answer. Yes, and so on and so forth.

Mr. AGRESTO. I would be glad to speak as——

Senator EAGLETON. The questionnaire, just so we have it in the record, is signed. It was signed by Dr. Louis Bellardo, the Georgia Historical Society, 501 Whitaker Street, Savannah, GA. We hope the questionnaire is part of the record.[1] I think that was pursuant to the agreement the last time.

Mr. AGRESTO. I was not sent that questionnaire.

Senator EAGLETON. What? No, we didn't need to send that questionnaire to you, Mr. Agresto.

Mr. AGRESTO. Maybe you should have. Maybe you should have sent it to me, because I would have given different answers.

Senator EAGLETON. They screened everybody as to who was Democrat, who was Republican, who would take political job references from the White House, who has contributed to the Republican Party, "Why did you register as a Democrat?"

Two other individuals told staff that they were interviewed along the same lines.

Mr. AGRESTO. My questions were significantly, substantially different.

Senator EAGLETON. You were safe.

Mr. AGRESTO. My questions were very different.

Senator EAGLETON. That is all I have. Senator Levin?

Mr. AGRESTO. May I add on since we talked about politicization? That has come up a good deal today. It came up in some of the witnesses, and you, Senator, have mentioned it, as well. I must say, when I met with Mr. Tuttle, I met with him twice. We talked about the Bicentennial of the Constitution; we talked about preservation; we talked about——

Senator EAGLETON. Tuttle was interested in the Constitution? [Laughter.]

Mr. AGRESTO. He was very interested. As a matter of fact, he wanted to know what I took to be the high point of what I had done at the Endowment, and I said the work with the Constitution.

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[1] See p. 505.

Senator EAGLETON. Mr. Tuttle, the personnel officer?

Mr. AGRESTO. Yes, sir, and maybe he wasn't quite listening, but he listened to me say it, sir. We talked about my scholarly interests, and we talked about everything but what you are talking about here. But to talk about politicization in general, no. I don't mean that we talked only about politicization in specifics either, sir.

I talked last time about why, although people will say I am a partisan or political candidate, no one seems to be able to figure what constitutes that partisanship or why not interpretation that has come in. I was looking for one example. I was looking for 10, but I would have settled for 1. I didn't see any, Senator, not one. No matter what criteria you use, whether it is my writings or my work at NEH or my record of political contributions when I am branded a cheapskate in public by a Senator, they all point in the direction of being a nonpartisan appointee of this administration.

I have written books; I have written scores of articles and speeches. All of these materials are here for you to read. If you can find in them partisan or ideological stands, please tell me. I have one book.

Senator EAGLETON. What is Mr. Tuttle's first name?

Mr. AGRESTO. Robert.

Senator EAGLETON. Is his father Holmes Tuttle?

Mr. AGRESTO. I believe so.

Senator EAGLETON. Is Holmes Tuttle a famous original Reaganite from California?

Mr. AGRESTO. I don't know.

Senator EAGLETON. One of the original financial backers from California?

Mr. AGRESTO. May well be.

Senator EAGLETON. You are sitting there at the White House having this erudite discussion of the Constitution with Robert Tuttle.

Mr. AGRESTO. Do you know what Mr. Tuttle was interested in most, Senator? I talked with him about the fact that we started a program at the Endowment. We have a program there, most agencies do, where if you make a suggestion that is worth over $250 that you can get an award.

I just mentioned this offhand to him. I mentioned that I sent a notice around to the staff. I said, "Nobody gets credit for making suggestions to this agency of savings of less than $250. So the person who gives me the best suggestion for saving this agency $250 or less I will give him $25 out of my own pocket; second best, I will buy him lunch at the nearest cafeteria; third best suggestion, I will buy him a pie from Reeves."

We received 50 to 60 suggestions. We are a small agency, 250 people. We received 50 or 60 suggestions. Those suggestions saved the agency thousands of dollars. We received more suggestions than we had in the whole history of the agency going back 7 years under the program, and of the suggestions, one will save $15,000, one will save $3,000.

I told that to Mr. Tuttle, and he was impressed with that. We also spent time talking about the Constitution, talking about immigrant parents and grandparents, and talking about preservation.

He came back again to specifically ask me what we were doing and what the Library of Congress was doing about documentary preservation. I will defend him in this absolutely. He wanted to be certain that the person sent here could talk to you about those matters and understand those matters.

Let me go back to politicization and talk about it. The copyright on the second book I edited "Liberty and Equality Under the Constitution" is held by the American Historical Association. They claim in their testimony I am politicized, but I would ask if they thought that book was. I would doubt it.

The Organization of American Historians asked me to write an article for them for their opening newsletter to teachers of American history, although I think with the great flap over my nomination, they have not printed that.

We have reviewed 30,000 grants while I have been at the agency, sir, in the last 4 years; and many have gone to organizations and to people opposing me, not just organizations or people supporting me, as you know. Were those grants partisan? The General Accounting Office came over to my agency and for weeks waded knee deep in 30,000 proposals looking for partisan or political grants, Senator, and they came up with nothing, as you know, and as they told this committee.[1]

I have a council that I work with at the agency that was apointed by both President Reagan and President Carter. Mr. Marcus Cohn, whose testimony began the hearing, Senator, which you missed, is a Carter member of that council. I have worked with that person and others, both Carter and Reagan appointees to that council. Some of them are here to testify; some of them have sent in their testimony.

In fact, when I finished my stint as acting chairman, they unanimously commended me for my performance. I take that to be a high mark for nonpartisanship. When I came here last time, I was introduced by two Senators I have the greatest respect for, Senator Orrin Hatch and Senator Paul Simon. I do not believe they would come here and tell you that I ran a partisan or political operation. When Senator Simon said I would be an outstanding Archivist, he did not mean to say I was partisan. He knows otherwise.

Just before I came to the agency, in 1980, there were 12 political positions at my agency. When I left being acting chairman, I had gotten that down to three. We went from 12 Schedule C, 12 political positions, to 3 while I was acting chairman.

And yet there are societies, there are institutions opposing me and claiming I am political. I learned that the John Birch Society opposes me. I read in the paper the other day that the first person Accuracy in Academia criticized for being an academic they don't care for was a person who got a grant through me at the NEH. I was nominated to this position because of my nonpartisanship, because of my stewardship of NEH.

I hatched myself voluntarily. I mentioned that a few minutes ago. I would like to ask something of this committee. You have my books, you have all my writings. You have everything I have ever said, written, or spoken that I have in print. I would appreciate your looking at that. I know others have looked at that. See if you find anything partisan or political in there at all.

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[1] A letter from Senators Eagleton and Mathias requesting clarification on this point and a letter from Mr. Agresto explaining his statement may be found beginning at p. 561.

Senator EAGLETON. Mr. Agresto, I have just received a note. Senator Roth wants to continue to chair this hearing. He has asked that we suspend questioning, and we will pick up tomorrow at 3:30 p.m. to finish the chairing of the hearing.

So first off, I will ask the witnesses that weren't here today, Dr. Flemming and Ms. Simmons and Mary Berry, to be available tomorrow at 3:30 p.m. in this room. I ask Mr. Agresto to be here tomorrow, and Senator Roth will chair.

Senator Riegle has been waiting for about 20 minutes and said he would like to ask one question.

Senator LEVIN. Senator Levin.

Senator EAGLETON. Who did I say?

Senator LEVIN. Reigle. I don't mind, but he is my senior.

Senator EAGLETON. Riegle has more hair. I am sorry. I will ask Senator Levin, since he has been waiting for a while, to ask one question, and we will adjourn until tomorrow at 3:30.

Mr. AGRESTO. May I also add something before we adjourn?

Senator LEVIN. Mr. Chairman, the witness has acknowledged that he was asked some political questions by Mr. Tuttle. Is that right? There is no doubt you were asked some political questions by Mr. Tuttle. You were asked did you contribute to the Reagan campaign. Is that right?

Mr. AGRESTO. I was asked about my contributions, and I told him what my answer was, yes.

Senator LEVIN. You were asked whether you made contributions; is that right?

Mr. AGRESTO. Yes, in 1980, yes, I was asked.

Senator LEVIN. You were asked whether you made speeches on behalf of the President?

Mr. AGRESTO. Yes, and in both cases, I answered negatively.

Senator LEVIN. I wonder if you could answer my question. Let's start over. You were asked political questions. Putting aside for a moment your answer, you were asked political questions.

Mr. AGRESTO. I was asked those two questions.

Senator LEVIN. Were there any questions asked by Tuttle on either occasion or anyone else in this administration that you thought were political?

Mr. AGRESTO. No, sir. I wasn't asked any other questions that I thought were political.

Senator LEVIN. Did you think those questions were political?

Mr. AGRESTO. Those questions have to do with politics, yes.

Senator LEVIN. Did you think those questions were political?

Mr. AGRESTO. Yes.

Senator LEVIN. Did you tell Tuttle you didn't think it was appropriate for him to ask a political question?

Mr. AGRESTO. I gave him the answer that I gave you: I said, "No, I didn't" and "No, I didn't".

Senator LEVIN. Do you think it was appropriate for you to be asked those questions?

Mr. AGRESTO. I would not have asked those questions myself.

Senator LEVIN. Do you think it was appropriate for you to be asked those questions?

Mr. AGRESTO. No, I don't think it was appropriate.

Senator LEVIN. The rest of my questions I will save for tomorrow.

Mr. AGRESTO. May I say something, Senator?

Senator EAGLETON. Sure.

Mr. AGRESTO. Thank you. The good news that happened to me as I came here today was that I just learned that the American Federation of Government Employees is withdrawing its testimony against me and withdrawing its opposition to my nomination. On Friday afternoon, I received a call from the head of the local AFGE unit at the union at the Archives asking me if he could come and speak to me. He came and spoke to me. We spoke for about an hour. We talked about a number of things.

He asked if he could go and canvass my employees; if he could talk to women, to black women. I gave him free rein to walk around and talk.

He came back that afternoon and said he was satisfied; that, in fact, they were going to withdraw their opposition to my nomination.

I think this is one small evidence, one small proof, that I am adding to what I said last time, that those who speak to me and those who know me and those who come and find out what my positions are are not opponents of mine.

Now, I would hate to have that testimony be held suspect because, now that unions are on my side, or the union is now not against me, or I have always been part of the union family, that that would be held "political" in some way.

I must say I was heartened, absolutely very heartened, by the withdrawal of the American Federation of Government Employees of the opposition to my nomination.[1]

Thank you.

Senator EAGLETON. The committee will be in recess until 3:30 tomorrow afternoon.

[Whereupon, at 4:40 p.m., the committee was recessed to reconvene the following day, September 10, 1986.]

NOMINATION OF JOHN AGRESTO

WEDNESDAY, SEPTEMBER 10, 1986

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 3 p.m., in room SD-342, Dirksen Senate Office Building, Hon. William V. Roth, Jr. (chairman of the committee) presiding.

Present: Senators Roth, Eagleton, Chiles, and Levin.

Chairman ROTH. The committee will please come to order. This afternoon, we are continuing the hearing to consider the nomination of John Agresto to be Archivist of the United States.

We will first hear from the remaining witnesses who have asked to testify regarding this nomination. Yesterday, we limited the time of each oral statement to 5 minutes, and we will continue that practice today. The entire statement of each witness will be printed in the hearing record.

So at this time, I would like to call forward Dr. Mary Berry, the vice president of the American Historical Association and Ms. Althea T.L. Simmons, the Washington bureau director of the National Association for the Advancement of Colored People. I understand Dr. Fleming is not here yet, but he is on his way.

Chairman ROTH. It is a pleasure to welcome both of you, and as I indicated, we would like to limit the opening statement to 5 minutes. But your full statements will be included in the record as if read.

Dr. Berry, would you like to start?

TESTIMONY OF MARY BERRY, PH.D., VICE PRESIDENT (1980-83), AMERICAN HISTORICAL ASSOCIATION;[1] AND ALTHEA T.L. SIMMONS, WASHINGTON BUREAU DIRECTOR, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE [2]

Ms. BERRY. Thank you very much, Mr. Chairman. I am here on behalf of the American Historical Association. It has 12,000 educators and scholars as members. I was vice president of the AHA from 1980-83. The AHA has been very much involved in returning the National Archives to its independent agency status, and in this area, the position of the Archivist from political interference.

I am a constitutional historian and I am also a lawyer. I have a long history of work and interest in civil rights, and I have followed Dr. Agresto's career with great interest. As an historian, I believe he is completely unqualified for the position of Archivist. In terms of the professional qualifications as described in the law and as a civil rights advocate, I, and many others, would find his confirmation repugnant to the goal of providing equal opportunity for those who have been long excluded in our society.

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[1] See p. 267 for Ms. Berry's prepared statement with attachments.
[2] See p. 291 for Ms. Simmons' prepared statement.

That law purposely and carefully designated the position of Archivist as a nonpartisan, professional one, appointed by the President, by and with the advice and consent of the Senate. With no fixed term of office, the appointment was to be one of an extraordinary nature and stature.

In many ways, it is akin to being appointed to the Federal bench, where the candidate's credentials are reviewed.

What Mr. Agresto wants to be, in short, is the custodian of the Nation's most important records of enduring value, our Nation's institutional memory, and he is simply not qualified.

He has a Ph.D. and so do I and a lot of other people. About 12,000 of those are awarded every year, thousands of them. The degree is simply a ticket to compete in the academic profession. It is the writings, research, professional contributions, and work experience that you look at, taken together, to decide whether he should have a higher position. Mr. Agresto's record does not merit this appointment.

Anybody who compares him with the record of people who have been Archivists of the United States before would think that he would be ashamed to have been brought forward to this committee to be confirmed.

In his testimony, Mr. Agresto said a lot of disturbing things. One of the things he said was that he believed the role of the Archivist in his own words, is, "* * * to make sense of the history of the Archives to the American people, to see to it that my understanding"—that is his understanding—"of the greatness of that heritage becomes public legacy."

That is troubling. The Archivist is not the Nation's history teacher. The statutory authority of the Archivist does not hint at any role for him in interpreting the documents entrusted to him. The statute says just the opposite.

He is a trustee of the Government's records. It is for other people, scholars, the research community, agency records managers, genealogists, and other users to reach conclusions about what the archives and what the documents mean. You may have directed State history to be interpreted some way in a totalitarian country, but this is certainly not the view we have in a democratic society like ours.

His very nomination, by the way, Mr. Chairman, makes me wonder whether the people at the White House understand what this position is, what it is all about, and what the unique requirements are for it. It is not a "plum" position to reward a team player for the administration. It is not supposed to be filled by somebody whose greatest merit is being a political crony of somebody in the administration. It is not a short-term appointment. It has no fixed term of office, and the Congress, from the legislative history and the statute, fully intended that the Archivist be insulated from political interference from each branch of Government and that the position would not turn over with the change of administration.

What are his qualifications? He seems to know the right people. That is his major qualification. He came to Washington in 1981 with William Bennett, who was appointed Chairman of the National Endowment for the Humanities. He worked with him at the North Carolina Humanities Center before coming to Washington.

At NEH what did he do? He was a political appointee filling the position of Acting or Assistant Chairman. When Dr. Bennett left to head the Department of Education, Agresto became Acting Chairman and Deputy Chairman. He wasn't Acting Chairman; Mr. Curran was, and when Mr. Curran's nomination was pending before the Labor and Human Resources Committee, Agresto decided he ought to help out the Congress in this matter, so he wrote letters berating people for encouraging the nomination and encouraging people to vote for Mr. Curran. That seems to me to be inappropriate behavior on the part of a political appointee.

He seems not to understand the law. On the question of affirmative action, we have that sorry little episode, a series of episodes, in which he refused to submit EEOC goals and timetables, compounding a problem that Mr. Bennett created with his help in the first place. He said he wanted to resign rather than comply. When the law was changed to require him to comply, he did so but described having to comply as being tragic.

Someone who is going to be appointed by the President and confirmed by the Senate, to be head of an agency ought not think it is tragic to have to abide by the law. Although using Justice Department advice as the basis for his policy, Agresto's noncompliance actually amounted to flouting the law.

If he were the constitutional scholar he says he is, he ought to be able to recognize a law when he sees one, and he also ought to know that that is not the business of the Justice Department to make the law. All they provide are opinions.

Affirmative action is an important issue for the staff at the National Archives. There are serious upward mobility problems there, and to bring someone like Mr. Agresto in who has shown that he cares little for the lot of career civil servants and has a hostility toward a Federal program designed to help them seems to me to bode ill for the staff over there.

In sum, Mr. Chairman, Mr. Agresto should not be confirmed as Archivist of the United States. He lacks the professional qualifications for the job; he has demonstrated a disregard for the law in order to accommodate his personally held views, and I would say to you finally that I have been confirmed twice by the Senate myself, and each time I took seriously the notion that the Senate would look carefully at the nominee's qualification who came up.

I wanted to make sure I was qualified. I know politics played a role, but I read and believed the reasons given by the framers of the Constitution for giving the Senate that role. They said, "We won't give the power solely to the President of the United States. We want to put a check on the Executive to assure the rejection of mediocre nominees who have only personal ties as a basis for their selection."

If John Agresto is confirmed, it will provide fresh evidence that unfortunately, I was wrong, and that the committee and the Senate does not take seriously its responsibility to look at these people. Here is a nominee whose only qualifications for this job consist of cronyism and ideology.

There must be some Republican out there who has better qualifications than that; I seem to know a few. I hope the Senate and the committee will deny his confirmation and in doing so, let the American people know that they can rely on the Archives and, indeed, not let the Constitution down.

Thank you, Mr. Chairman.

Chairman ROTH. Thank you, Dr. Berry.

Senator Levin, did you want to make a statement at this time?

Senator LEVIN. Not relating to this panel, but as soon as this panel is done, I would like the opportunity to make a statement, Mr. Chairman.

Chairman ROTH. Ms. Simmons?

Ms. SIMMONS. Thank you, Mr. Chairman. I am Althea T.L. Simmons, director of the NAACP's Washington bureau. I appear today on behalf of our 2,100 branches and members in all 50 States and the District of Columbia.

We oppose the nomination of Mr. Agresto. I say at the outset, Mr. Chairman and members of the committee, that the NAACP is a strong supporter of affirmative action. We believe that in America, one does not have the option of deciding which laws one should or should not obey. We believe that laws are necessary roadmaps for a civilized society, and we believe that you should comply with the laws of the land, even when you agressively seek to change them. That, to us, is the essence of democracy.

Our opposition to Mr. Agresto is based on his stance on the use of affirmative action and the blatant disregard of the laws and statements made by him as late as January 22, 1986, when he said, "We will abide by the law because we must, but faithfulness to the principle that no one should be judged on the basis of race or sex compels us to say that we view this occurrence as nothing short of tragic."

Affirmative action is necessary to erase the present effects of past discrimination. Policies of nondiscrimination alone are insufficient to erase the incidence and depth of inequality. More than neutrality is needed to achieve parity. Just as blacks and others have been systematically excluded from the American mainstream because of color, their inclusion must likewise be deliberate, systematic, and race-conscious.

The constituency I represent, persons who have been systematically denied opportunity on the basis of race, is hard put to deal with the clever play on words, to wit, and I quote, "Blindness to a person's color or religion, gender or race was, we thought, the hallmark of civilized justice as embodied in this Republic."

We disagree with the nominee because the harsh, grim, and stark reality is that our Republic has been notably race conscious, and that was recognized by Justice Blackmum in the *Bakke* case when he said, "In order to go beyond racism, we must first take race into account."

One of the things that disturbs me is Mr. Agresto's record. Any time a person seeks a job, and this is a job, he/she tends to put his/her best foot forward; the job seeker tends to say what he/she will do if given the opportunity. That is normal. I am more concerned about the record of the nominee. He may say that he will do all these nice things, but I have to look back at his record at NEH, and the record there is not a good record.

Therefore, it does not make me feel comfortable to believe he will pursue a different course if strong action was not taken with reference to affirmative action at NEH with 257 employees. Should we expect him to take any strong action at the Archives where he would have 3,505 employees.

When you look at the National Archives, out of 3,505 employees, only 39 minorities are professionals; 47 minorities are in administrative positions; 152 minorities are technicals, for a total of 228 persons in presumably mid and upper levels.

But when you add the 1,082 minority clericals, you have a total of 1,310 minorities at the Archives. Some might say: Well, that is not bad. But you must note that more than 1,000 of those jobs are in clerical positions.

Now, when Mr. Agresto puts a lot of emphasis on recruitment, then that means status quo, because when you take a look at the fact that we have had freezes in employment, that means those persons in lower positions don't get a chance to move forward.

We know that recruitment will not do the job alone, and even if the positions are available, blacks and other minorities are outside the buddy system or the "old boy" network, the party favorites and the ideology within the party favorites categories, which still account for a lion's share of the goodies in jobs.

Mr. Agresto seeks a lifetime appointment, and I believe the public needs to know the beliefs of the nominee and whether or not the employee will comply with the Nation's equal opportunity employment laws, whether his personal convictions are in sync with them or not.

The NAACP has reservations about the nominee who says that he would rather leave a job than to do something in terms of affirmative action, for example, judging by race and then later on to come back and say he is ready to stay on the job. We think the first statement he made reveals his true feelings, and we don't believe that if Mr. Agresto get this lifetime, safe harbor appointment that he is going to do anything for minorities.

In conclusion, Mr. Chairman, Mr. Agresto has been very candid. He stated for the record that he feels strongly about committing the Endowment, and let me read what he said: "—to judging our fellow citizens on the basis of race. I have been persuaded, however, that to walk away from this controversy because of these compunctions would not only do damage to the Endowment but would deflect consideration away from the issue at hand and confuse a public wrong with a matter of personal conviction."

I believe he believes that to use affirmative action efforts in his way of thinking is morally wrong. The NAACP believes that the nominee, by his own admission, is adamantly opposed to affirmative action and would not be inclined to comply with equal employment opportunity laws or set a positive tone for such inclusion of minorities in the workforce during a lifetime appointment at the National Archives.

We have no statement to make as to his qualifications. We are not competent to do that. We do believe we are competent in the area of civil rights, and we do feel that based on his record, he is incompetent to serve in this lifetime appointment as the National Archivist for these United States.

Thank you for allowing us to appear at this hearing.

Chairman ROTH. Thank you, Ms. Simmons.

Senator Eagleton.

Senator EAGLETON. Yes, thank you, Mr. Chairman.

Dr. Berry, you served as Assistant Secretary of Education in 1977 through 1980; is that correct?

Ms. BERRY. Yes, from 1977 to January 1980, yes.

Senator EAGLETON. Previously in your career, you had served as the chancellor at the University of Colorado, Boulder.

Ms. BERRY. That was, I was the chancellor at the University of Colorado, Boulder.

Senator EAGLETON. And you have held various other positions, both teaching positions and administrative positions in your career?

Ms. BERRY. That is right, Senator.

Senator EAGLETON. We had a witness yesterday, a Mr. Thomas Mann, I believe his name is. It turns out he was a personal friend of Mr. Agresto's and here is what he said yesterday. This is Mr. Mann, "I will tell you, I don't know of another academic who could come before you as the nominee of the President to be the Archivist with comparable administrative experience."

This is Mr. Mann annointing Agresto to be the most qualified academic with administrative experience in the United States; unique; no other. He said, "I don't know of another."

I asked him if he had heard of people like Kissinger. He was an academic; Kingman Brewster. I didn't ask him yesterday, I could have asked him about Terrell Bell. Remember, he was an academic. It is preposterous for anyone to annoint Mr. Agresto as the single most qualified academic with administrative experience, but I will put that to rest.

Ms. BERRY. Senator Eagleton.

Senator EAGLETON. Yes.

Ms. BERRY. I think your point is well taken. First of all, if I had been chancellor at the University of Colorado at Boulder, if I had been considering Mr. Agresto for tenure on the faculty, I would have had to turn him down based on his lack of publication, research, and experience.

As a matter of fact, as for being an administrator, there are thousands of people in this country who are scholars, who are good Republicans, who are good Reaganite Republicans who ought to be offended to have someone in the administration, which supposedly believes in merit and standards, bring somebody up here with these qualifications to be the Archivist of the United States, which is a premier position.

Senator EAGLETON. I can mention two Republicans. I have already mentioned one. Terrell Bell would be one. Arthur Flemming is a Republican, served as the Secretary of HEW under Dwight Eisenhower. Those are two that pop into my head, and you and I could sit here all day and come up with 2,000 others, all carrying Republican credentials.

Ms. BERRY. Right, and that is what is so embarrassing about this appointment.

Senator **Eagleton**. All right, now, as a professional historian and here today testifying on behalf of the American Historical Association, you are familiar with what went on in the creation of this statute, why we created this special statute pertaining to the Archivist; is that correct?

Ms. **Berry**. Right, yes, I understand.

Senator **Eagleton**. Heretofore, the Archives was tucked away in GSA.

Ms. **Berry**. Right, General Services Administration.

Senator **Eagleton**. And GSA traditionally, through Democratic and Republican administrations, has been the most politicized entity of Government.

Ms. **Berry**. Right.

Senator **Eagleton**. It was the receptacle of "hackdom," that is when you wanted to stash a "hack" you stashed a hack at GSA. [Laughter.]

And the Archives was being trampled by the hacks, so Senator Mathias and I tried to send a savior to extricate it from that position, being constantly beaten over the head by hacks—and Senator Roth.

Here is what the statute said, just to refresh your memory, pertaining to the appointment of the Archivist. He "—shall be appointed without regard to political affiliations and solely on the basis of professional qualifications required to perform the duties and responsibilities of the Office of Archivist."

With that statute in mind, this committee has evidence that the White House personnel office has systematically subjected persons interviewed for this position to political tests, political questions. Questions that the White House has asked include party registration; contributions to Republican candidates; willingness to accept White House job referrals to positions at the Archives.

Even Mr. Agresto admitted that he was asked political questions by Mr. Tuttle at the White House personnel office.

Now, I ask you this question, Dr. Berry: How do you think that that practice in the selection of Mr. Agresto comports with the statutory language and the legislative history that led up to the statute?

Ms. **Berry**. Well, it is, I believe, inconsistent, Senator, which is the reason why I said in my testimony that I don't really think, to be—to give the most generous interpretation, that the people at the White House understand what this position is or what it is supposed to be or what it is supposed to do, because to ask questions like that of someone when the statute says that they are not supposed to be, and they are supposed to be appointed without regard to political affiliations, seems to fly in the face of the intent of creating the post in the first place.

And so it is strange, and I would just say that maybe they didn't know what it was, but it seemed to me that they have a duty to know when they start screening people for a job like this.

Senator **Eagleton**. Oh, no. About the screening part, they knew what the Archives needed, and they knew what the statute was. They may have pretended they didn't know, but they knew.

Ms. **Berry**. They knew.

Senator **Eagleton**. There have been rumbles all over Washington about who is going to be the new Archivist. Various names have been dangled out, some of them professionally competent and qualified and respected in the area of history or archival work.

So it was well known what was at fault. Let me ask you this, now, Dr. Berry: Yesterday, I asked Mr. Agresto if he were "—a professional in the field of archival matters and in the treatment of historical records and in records management procedures."

I asked that question in that phraseology because I took that phrase from Senator Roth's statement on the Senate floor. He was the floor manager of the Archives bill, what we are talking about, and I asked the question using Senator Roth's own language from his floor statement.

Mr. Agresto's answer was, "Yes."

My question to you is: Do you think Mr. Agresto is "a professional in the field of archival matters in the treatment of historical records and in records management procedures"?

Ms. **Berry**. There is absolutely nothing in his experience or his background contained in his own résumé that would indicate anything that would say he had that kind of experience. There isn't anything there that indicates that kind of experience.

Senator **Eagleton**. My last question: I am going to read an excerpt which is in your 16-page statement with attachments—and you had only 5 minutes to deliver your excellent summary of it. I just want to ask you about one point in your statement on page 13, Dr. Berry, the bottom of the page, that you did not have time to address. I will read that one paragraph, quoting Dr. Berry.

Ms. **Berry**. Page 13?

Senator **Eagleton**. Yes, page 13, the bottom paragraph that begins with the word "more". Have you got it?

Ms. **Berry**. Yes.

Senator **Eagleton**. All right. "More troubling is Dr. Agresto's apparent need to shop around for someone or some agency's viewpoint which will support his own preconceived notions. He relied on an internal Justice Department memorandum to support his case on affirmative action. But in the case of the Nixon papers public access regulations, he has stated that he will ignore the Justice Department's interpretive memorandum of those regulations. As a constitutional historian and lawyer, I find this flexibility toward laws and the Office of Legal Counsel opinions very curious. You cannot have it both ways. If ours is a nation of laws, and not of men, we must have absolute confidence in those entrusted with carrying out those laws. Dr Agresto fails to install such confidence."

I find that well stated, because Dr. Agresto, when he came before us, took great pride in saying however many lawyers told him, however important those lawyers were, and wherever they would be found in the administration, whatever those lawyers told him about the Nixon papers, he was going to tell them to go somewhere.

Ms. **Berry**. To jump.

Senator **Eagleton**. To jump. He didn't care if it was the Attorney General of the United States, Deputy Attorney General of the United States. By golly, if William Rehnquist wrote him a memo, he wasn't going to pay any attention to that with respect to the Nixon papers, but when it comes to affirmative action, affirmative action, he is not only going to do what his lawyers tell him to do. His was one of two or three agencies that rebelled against affirmative action. He told the House of Representatives, "I am going to quit. That is how strongly I feel about it. If any lawyer tells me anything about affirmative action and I don't like it, I'll resign."

On page 11 of your testimony in an exchange between Congressman Hawkins and Mr. Agresto, "If I were told that I must, as the head of an agency, supply goals and timetables as a matter of law, I would resign my position as the head of that agency."

So if he is confirmed as the Archivist and he is sitting there virtually for life a new administration comes in and the Attorney General of the United States says, "It is a new day here; we are very strong on affirmative action once again; we believe in the Constitution; it has had its 200th birthday by now"—this will be in 1989—"We believe in equality of opportunity and equality of treatment and I am the Attorney General of the United States, and I tell you, Mr. Agresto, we want you to enforce affirmative action," Agresto says he will resign. He didn't resign when he was over there in whatever that place is, the Endowment for the Humanities.

So he does want it both ways. He is going to be firm and tell lawyers to go to hell on the one hand, and on the other hand, he is not. Can you make any kind of intellectual sense about what Agresto is saying?

Ms. **Berry**. The only sense I can make about it, Senator, is he is one very slippery fellow. Second, he does what lawyers call, of course, shifting ground, and he picks and chooses to find the basis for whatever judgment he thinks is either morally correct in his own mind or is politically platable.

If the past is any guide to the future, what he will do if he gets this post is to find legal opinions to support whatever he wants to do. The important thing to remember about this is that even if we don't care about affirmative action or even if we don't like it, or even if we don't care about the Nixon papers or any of this, the issue is not whether you care about those specific things. He has demonstrated in his response to those, which are a matter of record, that anything that happens at the Archives or anyplace else where he's involved, which is a matter of policy, he will find some legal theory somewhere to support whatever it is he wants to do and flout that as a basis, or if he doesn't want to do what the extant legal theory is, he will say, "Well, I refuse to abide by the law," and then if he is made to do so, we will talk about how tragic it is that he is supposed to abide by the law.

He is a very, very slippery fellow, and I, for one, in addition to his lack of professional qualifications, think a person like that has no business—if he takes an oath to say that the laws are faithfully executed, what does that mean? Who interprets the laws? And whether he likes an affirmative action or not it is the law.

Whether he likes any other kind of law, it is the law, and when you take an oath to carry out the law, you are supposed to do what the law requires. There must be somebody around, Senator, and I know there is somebody around, they can find somewhere in the

United States, who has the professional qualifications and who fits administration criteria without bringing embarrassment to this office. Someone who wouldn't be quite so slippery and not raise doubts whether you can trust the person to do the right thing.

Senator EAGLETON. The last analysis, Dr. Berry, isn't that what 1987 is all about?

Ms. BERRY. That is exactly what it is all about.

Senator EAGLETON. The celebration of the 200th anniversary of the Constitution, to wit, the law, the greatest law, the Constitution of the United States.

Ms. BERRY. It is about the Constitution, and it is about the role of the Senate in the Constitution, and it is about taking seriously that role.

Senator EAGLETON. I have no further questions.

Chairman ROTH. Senator Levin?

Senator LEVIN. Mr. Chairman, I want to thank the panel, and I have no questions of this panel.

Chairman ROTH. Senator Chiles?

Senator CHILES. No questions, thank you.

Chairman ROTH. I, too, want to thank both of you for coming here today and presenting your point of view. Thank you very much.

Ms. BERRY. Thank you very much, Mr. Chairman, Members of the Senate.

Chairman ROTH. Senator Levin, do you want to make a statement at this time?

OPENING STATEMENT OF SENATOR LEVIN

Senator LEVIN. Mr. Chairman, the 1984 law that made the Archives independent from the GSA states the following: "The Archivist shall be appointed without regard to political affiliations." The House and the Senate took great pains to make the Archivist a nonpolitical office. Both the Senate and the House versions of the National Archives and Records Administration Act contain the same language: "The Archivist shall be appointed without regard to political affiliation."

The Senate Governmental Affairs Committee report on the 1984 Archives independence bill had an entire section devoted solely to politicization. That section discussed the dangers of the Archivist being a politicized position.

The committee report said the following:

> In sum, the committee believes that the record, under both Democratic and Republican administrations, amply demonstrates the dangers of politicization which can occur under the current arrangement—of the Archives being part of GSA rather than independent. In our view, re-establishing independence for the Archives and the Archivist would provide the best insurance that archival and records management decisions would be made on a professional basis, unaffected by political considerations or other extraneous factors.

The conference committee report said the Archivist should be "insulated from the political orientations of a particular administration."

Mr. Chairman, at yesterday's hearing, Mr. Agresto stated that he had been asked by Mr. Robert Tuttle, Director of Presidential Personnel, whether he had contributed to the Republican Party in

1980. Mr. Tuttle also asked Mr. Agresto whether he made any speeches on behalf of President Reagan.

Mr. Agresto told this committee he thought those questions were political. Mr. Agresto also said he did not think those questions were appropriate. Neither do I.

Another person being considered for the postion of Archivist, Dr. Bellardo, was also asked these and similar questions by Mr. Tuttle. Senator Eagleton has already inserted a letter from Mr. Bellardo in the record. In that letter, Dr. Bellardo said he was asked by Mr. Tuttle what his political party affiliation was.

Dr. Bellardo was also asked by Mr. Tuttle if he had contributed to the campaigns of Republican candidates. Dr. Bellardo was also asked what his response as Archivist would be to referrals by the White House of political appointees for positions at the Archives.

In a May 16, 1986, letter which I have already inserted in the record, Mr. Tuttle told a Mr. Baker, who has written about the Agresto appointment, that:

> Please be assured that we are doing everything possible to see that only the most highly qualified men and women who reflect and support the President's policies are appointed to positions of public trust in the Reagan administration.

Mr. Chairman, the evidence that I have presented here points to a violation of the Archivist's statute and our clearly stated congressional intent. It is strong evidence to support the proposition that the White House did exactly what our statute directed it not to do, to make political considerations a factor in selecting the Archivist nominee.

This is a unique statute. I don't know of any other statute, offhand, which has such a flat-out prohibition which requires that an appointment be made without regard to political affiliations.

It surely is not true of Cabinet officers; it is not true of judicial appointees, as far as I know. This committee is obligated, Mr. Chairman, in light of this information, to determine directly from Mr. Tuttle the extent to which political affiliations were considered in his decisionmaking.

I therefore ask, Mr. Chairman, that Mr. Tuttle be called as a witness during the course of these hearings to answer questions on this subject, and I would remind the Chair, and I don't think I have to, that this committee wrote this statute. It wasn't me; it was Senators Eagleton and Mathias and the chairman and others. But I was here, I believe, when this statute was adopted.

This statute has a clear, flat-out requirement unlike any other statute I know, that an appointment be made without regard to political affiliations. We have sworn testimony that inquiry was repeatedly made by the administration, by its nomination authority, of people's political ideology, attitudes and affiliations.

To make sure that this selection process has not been polluted, this committee should call Mr. Tuttle as a witness and have the opportunity to inquire of him whether or not, in fact, any political affiliations were inquired into and considered, as part of this appointment process.

Mr. Chairman, I have had a chance to ask some of my colleagues whether or not they concur in this, and a number of us have made a formal request to the Chair so that this witness can be called.

Chairman **Roth**. As you know, Senator Stevens has chaired the other 2 days of these hearings, because I was much involved in the tax conference. I would want to consult with him about this before making any final decision.

I would point out that it is not normally the practice, however, to call upon members of the White House staff as to the procedures they use within the White House.

I was not here, but from my understanding of what has transpired, when Mr. Agresto was asked whether he had made political contributions to the Reagan campaign or spoken on the President's behalf, in both cases his answer was in the negative. So that, in fact, on the basis of the factual situation and not only the kind of questions that were asked, it certainly would appear that politics did not play a role.

If it had, in fact, if the selection were to be based upon his political contributions, then it would appear that he gave the wrong answers. At least on my knowledge of what has transpired, the factual situation seems to be to the contrary.

So at this time I will rule in the negative, but I will want to consult with Senator Stevens.

Senator **Levin**. Mr. Chairman, if I could just briefly comment?

Senator **Eagleton**. Let me say a word or two before you go on.

I would hope that the chairman would hold this ruling in abeyance. I think the chairman has missed the point of Senator Levin's request. Yes, Dr. Agresto answered in the negative as to whether he had made contributions or given speeches to President Reagan.

The issue is questions that Mr. Tuttle has been asking of the prospective nominees and whether Mr. Tuttle has so polluted—is the word Senator Levin used—and politicized the selection process as to have made this process in violation of the law that this committee created with great pains and great care and great attention.

Because not only did Tuttle ask the questions of Agresto; he asked more questions of Dr. Bellardo, and he asked questions of two other nominees who, up until now, prefer to remain anonymous. But I think once Mr. Tuttle comes forward, we would have their testimony, as well.

That is, Tuttle, the interviewer, Tuttle, the job procurer, asked a series of political questions to a whole host of potential nominees, politicizing and polluting the process.

So this committee has a dual responsibility to see whether Agresto should be confirmed but also to see whether the whole selection process has been tarnished, and so it is in that light Senator Levin made his request.

Senator **Levin**. Mr. Chairman, if I could?

Chairman **Roth**. Yes, Senator Levin.

Senator **Levin**. Just two points: One, if I could file and share this formal request for the appearance of Mr. Tuttle, which has been signed by the requisite number of Senators, so that under the Senate rules, I believe we are entitled to have that witness called. But I would let the Chair review the Senate rules on that and rule on that as the Chair will.

But I believe that we have complied with the Senate Rules in this regard, and I would ask the Chair to take that request under consideration.

Two, we have testimony in the record that the nominees were asked about their political affiliation.

We have Dr. Bellardo's testimony or his statement, which has been made part of the record, that he was asked by Mr. Tuttle about his political affiliation and that he answered that. We have Senator Eagleton's question of Mr. Agresto as to whether or not they inquired about his political views, and Mr. Agresto's answer was that, "They knew that I was, that I am a registered Republican."

Mr. Chairman, let me emphasize here that the issue that I am raising is whether or not this appointment process has been polluted by the consideration of political affiliations by Mr. Tuttle.

There is evidence, in fact, there is a significant amount of evidence, that Mr. Tuttle inquired about political affiliations. It is, indeed, unusual to have a witness from the White House testifying in this kind of a matter, but it is probably unique that there is a statute which prohibits the White House from considering something. And we have evidence in the record that they did, in fact, consider it. I believe this is a unique statute.

We have a statutory prohibition against the consideration of political affiliations. We have had evidence, not just from Mr. Agresto, but from others, that this appointment process involved asking people about their political affiliations.

It is the only statute I know of which has this prohibition. This is the only hearing I know of that has introduced this kind of evidence of a violation of statute in this way, and I would think that our oversight responsibility as the committee that wrote this statute requires that we hear from this witness.

But in any event, whether the Chair agrees with that point, I do believe that the Senate rules provide that a majority of the minority thereof can request a witness, and since a majority of the minority here have made this request, I would ask that the chairman honor it.

Chairman ROTH. The Chair has made his tentative ruling. I will take the matter under advisement. I would just point out that when the nomination comes before the committee on a vote, each member at that time, of course, will be able to vote on what he feels to be the situation.

I find it a little ironical. I don't think you will ever be able to prove why the President nominates any particular individual, whether it be Rehnquist for the Chief Justice or at any other level. But in any event, we acknowledge receipt of the request. I have made my tentative ruling. We will look further into the matter.

Senator EAGLETON. May I make one other request of the Chair, not to belabor it, and we will go on with Mr. Agresto?

Chairman ROTH. Senator Eagleton.

Senator EAGLETON. Yes, thank you, Mr. Chairman. I make the following request, which is supplemental to Senator Levin's request. I fully support the Levin request. If that be denied, which I think would be wrong insofar as the Senate rules are concerned in light of this unique statute, I request that we have a further day of hearings, any day of the Chair's choice next week, to ask Mr. Tuttle if he will come forward voluntarily, and also to hear from two additional witnesses who were considered for this post and who were asked political-type questions by Mr. Tuttle, and that all witnesses be under oath.

Chairman ROTH. We will take, again, your request under advisement, together with that of Senator Levin.[1] At this stage, I would like to, if we could, proceed with further witnesses. We have Mr. Thomas Kemp, director of the Turn of River Library.

Senator LEVIN. Mr. Chairman, may I ask, on another matter, a question of the Chair? I am going to have to leave. I believe Senator Chiles has some questions of Mr. Agresto, although I am not positive of that. Yes, I understand that he does.

I am wondering, if there are no additional days of hearings, if that is the ruling, if that is the outcome of our request, whether the record will be kept open for additional questions of these witnesses. I have to leave now. I can't stay to ask Mr. Agresto my questions.

Chairman ROTH. Yes.

Senator LEVIN. In the event that this turns out to be the last day? Thank you, Mr. Chairman.

Chairman ROTH. Mr. Kemp.

TESTIMONY OF THOMAS KEMP, HEAD LIBRARIAN, TURN OF RIVER LIBRARY[2]

Mr. KEMP. Mr. Chairman and members of the committee, I have come today to speak in support of the nomination of John Agresto as the next Archivist of the United States. I feel that Dr. Agresto has the requisite experience and training for this position and, most importantly, has the spark of vision needed to creatively lead the National Archives into the future.

I have not come to this conclusion lightly. As a long-term member of the American Historical Association, Organization of American Historians, Society of American Archivists, American Library Association and similar associations, I became aware of the rising chorus of those who oppose this nomination and decided to investigate just why they were opposed to it.

It quickly became apparent to me that the basic objections were that, "It is feared he would politicize the Archives because he is neither an archivist or a seasoned administrator."

In other cases, some groups simply wanted their own candidates to be appointed. I was appalled to find the opposition to Dr. Agresto was based on rumor, innuendo, and total lack of objective investigation. Resolutions were passed by groups without ever contacting Dr. Agresto at all.

Knowing what his detractors had to say about him, I was anxious to learn from him what his goals and plans were for the National Archives. I contacted his office and arranged for an appointment with him. Accompanying me were some 11 other librarians, archivists and genealogists from around the country, active users of the central Archives and its branch facilities in their areas.

We asked him to respond to our questions, and that he did for over an hour. The questions were frank, probing and insightful. We had come to objectively determine if this nominee would be a wise choice to lead the Archives. We found that he was a well-rounded nominee of insight, new ideas and progressive goals for improving the overall service of the Archives.

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[1] Additional information regarding the selection process and these requests may be found beginning at p. 472.

[2] See p. 299 for Mr. Kemp's prepared statement with attachments.

Dr. Agresto has clear goals to promote access to and use of the many collections by students, teachers, genealogists and the general public. He would clearly seek to raise the Archives in the public consciousness to the level of the Library of Congress and the Smithonian Institution.

Mr. Chairman, I would ask you and the members of the committee to vote to confirm Dr. Agresto as the new Archivist of the United States and that you recommend this action to the entire Senate.

Thank you.

Chairman ROTH. Thank you very much for your statement, Mr. Kemp. Is that the full statement?

Mr. KEMP. The rest of it I had provided earlier, sir.

Chairman ROTH. We will include it as if read.

Senator EAGLETON. Just a couple of questions, Mr. Chairman.

Chairman ROTH. Senator Eagleton.

Senator EAGLETON. What is the Turn of the River Library, Mr. Kemp?

Mr. KEMP. The Turn of the River Library, sir, is a public library in Connecticut.

Senator EAGLETON. Is it a main branch of a public library?

Mr. KEMP. No, sir, it is a branch library of the Ferguson Library, which is the the main library in Stamford. But we are proud that the Turn of the River Library is the busiest library in the State.

Senator EAGLETON. So it is a main library?

Mr. KEMP. No, a branch, but with the largest circulation in the State, even thought we are a branch.

Senator EAGLETON. Genealogy is your specialty.

Mr. KEMP. No, sir, I am in charge of the library.

Senator EAGLETON. You have written a book "Home Study Courses of Interest to Genealogists and Local Stories by Thomas Kemp".

Mr. KEMP. I have written 13 books.

Senator EAGLETON. Is that correct?

Mr. KEMP. That is a recent pamphlet, sir. I have 13 books out, and genealogy is a very important hobby to me.

Senator EAGLETON. Thank you very much. That is all the questions I have.

Chairman ROTH. Thank you, Mr. Kemp, for coming.

Senator EAGLETON. Dr. Flemming is here.

Chairman ROTH. Please come forward, Dr. Flemming. I know that Senator Mathias wanted to be here when you appeared, but unfortunately, due to a conflict, he is unable to do so.

TESTIMONY OF ARTHUR FLEMMING, PH.D., FORMER CHAIRMAN, U.S. COMMISSION ON CIVIL RIGHTS

Mr. FLEMMING. I appreciate appearing before this committee in connection with your consideration of the nomination by the President of Dr. John Agresto for the position of Archivist of the United

States. Dr. Agresto served as Acting Chairman of the National Endowment for the Humanities from February 1985 to May 1986.

The committee, it seems to me, is confronted with this question: Will Dr. Agresto develop and implement equal employment and affirmative action plans for the National Archives and Records Administration in response to instructions issued by the Equal Employment Opportunity Commission under the mandate it received from the Congress in the Equal Employment Opportunity Act of 1972?

There needs to be a vigorous probe of Dr. Agresto's plans in light of the record he developed as Acting Chairman of the National Endowment for the Humanities. That record is set forth in a ruling of the Comptroller General of the United States on July 28, 1986, in response to a request from you, Mr. Chairman.

In submitting the National Endowment for Humanities' affirmative action report to the Equal Employment Opportunity Commission for 1984, Dr. Agresto, as Acting Chairman, omitted, in violation of the Commission's instructions, underrepresentation data and minority hiring goals.

His predecessor, Dr. Bennett, had followed the same policy in 1983. The Comptroller General, in his ruling of July 28, 1986, found that Dr. Agresto was legally bound to follow the equal employment opportunity directives in filing his agency's report.

The Committee on Government Operations of the House of Representatives held a hearing on Dr. Bennett's refusal. The Subcommittee on Employment Opportunities of the Committee on Education and Labor held hearings on Dr. Agresto's refusal. I participated in both hearings. I have listened to the explanations of both Dr. Bennett and Dr. Agresto.

In both instances, I concluded, and so stated to the committees, that in my judgment, both officials, in refusing to comply with the EEOC regulations, had violated their oaths of office.

I listened to Dr. Agresto in response to a question from Congressman Hawkins state that, "If I were told that I must, as the head of an agency, supply goals and timetables as a matter of law, I would resign my position as the head of that agency, for I would not put myself in a position of discriminating on the basis of race and sex."

In reauthorizing the National Endowment for the Humanities on December 20, 1985, the Congress included a provision which directed the chairperson of the National Endowment to comply with the Equal Employment Opportunity Commission regulations.

Soon thereafter, Acting Chairman Agresto provided EEOC with the National Endowment's affirmative action report for fiscal year 1985, and included underrepresentation data and hiring goals.

In a public statement he said, "We will abide by the laws because we must. But faithfulness to the principle that no one should be judged on the basis of race or sex compels us to say that we view this occurrence as nothing short of tragic."

The Congress, in reauthorizing the National Endowment for the Humanities, did not impose any new responsibility in the field of affirmative action on the agency; it simply told the head of the agency to obey a law that the General Accounting Office found he should have obeyed in 1984.

In short, it told him to start living up to his oath of office. The law in question is a law that is designed to open up doors of opportunity that otherwise will be closed. It seems to me that Dr. Agresto's past record places upon him the burden of proof of demonstrating that he is prepared to implement the Equal Employment Opportunity Act of 1972 as head of the National Archives and Records Administration in a vigorous and effective, not a lukewarm, manner.

I do not believe that he has made such a demonstration. I listened to Dr. Agresto's testimony on this issue during the first day of hearing on his confirmation. This and his testimony at the oversight hearing at the Committee on Education and Labor, and his public statement on his decision to comply with the law in 1985. They lead me to the following conclusions:

First, Dr. Agresto should not be confirmed because he does not believe that he made a mistake in deciding to violate his oath of office by refusing to comply with EEOC regulations. In fact, he feels that he made a contribution to the Nation by so doing.

Our system of government is threatened when public officials who have taken an oath to uphold the Nation's laws believe they can pick and choose the laws they will implement. A public official has the right to work through our system to bring about a repeal of the law in which she or he does not believe.

A public official should not, however, be accorded the right to refuse to implement that law. Dr. Agresto refused to take action that the General Accounting Office has found he was legally bound to take until the Congress, in a very unusual move, ordered him to take it.

Dr. Agresto should not be confirmed because when he responded to the directive from the Congress to comply with the law already on the books, he issued a public statement in which he said that he viewed "this occurrence as nothing short of tragic."

We cannot eliminate institutional discrimination in our Federal departments and agencies unless the heads of those agencies develop and implement affirmative action plans in a vigorous manner. That is why responsibility for taking such action has become the law of the land.

An administrator who has refused to obey that law until directed to do so by a special act of the Congress, and then has characterized the requirement as a tragic occurrence, cannot be expected to instill confidence in present and prospective employees of the Archives in his willingness to vigorously support our Nation's efforts to stamp out institutional discrimination.

I am aware of the differences of opinion relative to the responsibilities of Senators in passing on nominations by the President. Under our system of checks and balances, however, I believe that if the President nominates a person who is proud of a previous violation of an oath of office and regards as a tragic occurrence a mandate from Congress to uphold the law requiring the development and implementation of affirmative action plans, the Senate in the interest of underlining the fact that ours is a government of laws and not a government of women or men, should withhold its consent.

Thank you, Mr. Chairman, for this opportunity of presenting my views on this matter.

Chairman ROTH. Thank you, Dr. Flemming.

Senator Eagleton.

Senator EAGLETON. I have no questions for Dr. Flemming, but I would like to make this brief statement, Mr. Chairman. This will undoubtedly be the last time that I will be privileged to hear the testimony of Dr. Flemming as a witness before the committee as I sit on it. I think that is why Senator Mathias so much wanted to be here, because it would have been, for him, his last opportunity to have been with Dr. Flemming in an official capacity.

There are many men and women that I admire who have served this country, a whole array of various capacities at very high levels, some at mid level, et cetera.

I know of no American citizen who has served his Nation with greater dedication, greater strength of character, greater courage than Arthur Flemming. One of the great things that I will miss when I go back to St. Louis and Senator Mathias will go to not too far off Baltimore is I will be missing this opportunity.

Senator CHILES. Do you recognize Dr. Flemming will still be here to serve in some capacity of government even though you might not?

Senator EAGLETON. That is right. I will miss the opportunity of hearing and learning from Dr. Flemming.

Mr. FLEMMING. Senator Eagleton, may I express to you my very deep appreciation for your comments. May I say, as one who will still be living in this area and one who will still be endeavoring to function as an advocate on behalf of various issues, I and many, many other persons are going to miss your presence in the Senate of the United States. I have welcomed the opportunity of working with you, as I have served as U.S. Commissioner on Aging, as Chairman of the U.S. Commission on Civil Rights. Although we may not have always agreed on every particular point, the objectives you have had in mind are the objectives toward which I have tried to work, and it has meant a great deal to me to be associated with you.

I appreciate your comments very, very much.

Chairman ROTH. I have no further questions, Dr. Flemming. Again, I want to express my appreciation for your being here today and your patience in waiting until this late hour of the afternoon. Thank you very much.

Senator CHILES. I just want to associate myself with the remarks of Senator Eagleton. I think we have enjoyed and look forward to enjoying further your testimony before us, Doctor.

Mr. FLEMMING. Thank you, Senator. Mr. Chairman, I appreciate your comments very much, and I appreciate the opportunity of being here today. Thank you very much.

Chairman ROTH. Thank you.

At this time I would like to call back Dr. Agresto. Senator Chiles, I think you had some questions you would like to ask at this time.

Let me, if I might, just before turning over the questions to you, go back, because I think it is worth repeating at this time some of the statements made by Senator Simon when he introduced Dr. Agresto initially to this committee.

At that time, Senator Simon, who is certainly a well-respected Democrat of the Senate, said,

> Let me just say briefly that John Agresto is a magna cum laude graduate from Boston College; got a Ph.D. from Cornell University; taught 8 years at the University of Toronto, Kenyon College, and Duke University.
>
> He was the projects director of the National Humanities Center in North Carolina, where I got to know him. He was an assistant then for Bill Bennett, who is now our Secretary of Education. As Acting Chairman, he has continued the peer panel system; from everything I know, he has, at the National Endowment for the Humanities, done a superb job. His philosophy on the Archivist's role is clear. The principles of preservation and access belong to no parties. Conservatives do, and I think they do, have an interest in preservation of our past and the records of our culture and the works that help define our national character.
>
> On that level, preservation is surely a conservative act, but it is a highly liberal act, as well. Information and knowledge give us the wherewithal to think for ourselves and be free to come to our own conclusions."
>
> I would add two other points. I had some public clashes with Bill Bennett on his failure to comply with EEOC requirements. I am pleased to see that John Agresto has complied with affirmative action requirements of the law, and I think that is to his credit.

I just read that over because I think it is worth repeating at this time. Different Members of the Senate may have differing opinions, but certainly, one very prominent Democrat has come forward in support of your credentials and nomination.

With that, we are pleased to have you here again, Mr. Agresto. You, of course, are already sworn, so it is not necessary to reswear you, but you are under oath. I, at this time, will call on Senator Chiles.

Senator CHILES. Thank you, Mr. Chairman. Just 2 years ago, we rewrote the statutory charter for the National Archives. Congress decided we should entrust our national heritage to an independent and nonpartisan institution. That is exactly why we separated the Archives from the General Services Administration and established an independent agency.

These hearings have focused on the specific language of the law. I quote that, "The Archivist shall be appointed without regard to political affiliation and solely on the basis of professional qualifications * * *."

Mr. Agresto is the first nominee under the new statute. That is why it is doubly important the confirmation process ensure he be selected solely on the basis of professional qualifications. Another major question related to the need for independence concerns the Presidential Libraries.

Mr. Chairman, as you know, I have been concerned, as you have, over some of the unnecessary benefits former presidents receive once they leave office. I feel that, and I want to stress this, I think the responsibility has been on the part of Congress. Former Presidents take those benefits that are allowed to be there. I think any former President would do that.

But I think Congress has allowed an era of an imperial form of Presidency to reign for too long.

A major area of concern is Presidential libraries. They should be libraries that serve the public rather than the ego of the former President. I sponsored, on the Senate side, a new Presidential Libraries Act. President Reagan is exempt because the law is prospective. We felt that was necessary in order to get the law passed.

I want to ask you, sir, about how you view your role vis-a-vis the Presidential libraries. The friends of former Presidents tend to want to outdo their predecessors. I have heard, for example, that President Reagan is interested, or his friends are, in proposing a library that is much larger than any that had been built since President Johnson.

If you are confirmed, you are going to be the person on the point between the interests of the President's library supporters and the public. The Archivist has the job of being sure that the public pays for a library and not a pyramid befitting an Egyptian pharaoh.

I am very concerned about the need to know whether you are going to be independent enough and tough enough to handle that role. Let's start with your view of the law, the existing law that President Reagan will be under. What do you see as the Archivist's responsibility in regard to Presidential Libraries?

TESTIMONY OF JOHN AGRESTO, NOMINEE TO BE ARCHIVIST OF THE UNITED STATES

Mr. Agresto. I think the responsibility is as it is laid out there in the law. The law says that the Archivist is to approve the design and approve the technical standards of Presidential libraries. I think that is only appropriate. That the Archivist may solicit and accept gifts for maintaining and improving Presidential libraries is also absolutely appropriate and fine. And that the Archivist must—this in the 1986 law, now—ensure that an endowment is assured to defray the costs of operations of a Presidential library.

The endowment is to equal 20 percent of the total cost, and if the library is larger than 70,000 square feet, then it is to be a higher percentage. I find that totally and wholly appropriate, yes.

Senator Chiles. Under the law that President Reagan is going to be operating under, would you say that ultimately, the Archivist can refuse to accept a library facility unless he felt it was in the public interest to go forward with it?

Mr. Agresto. Before I spoke specifically about the law, I would certainly want to confirm that and want to speak with the general counsel and legal counsel at the Archives. I do not know that the Archivist is to look over, to review the design standards for the building and that does apply to the Reagan Library.

Senator Chiles. Let me ask you this: Assume the design standards are there but it looks like the cost of maintaining that is going to be prohibitive to the public or is going to be very tremendously high to the public. What do you see the role of the Archivist as being?

Mr. Agresto. Under the future in the 1986 law?

Senator Chiles. That is right.

Mr. Agresto. Under the 1986 law, it seems absolutely clear. If there is no endowment, then the Archivist is, in fact, to deny it. He may not proceed if the endowment is not equal to 20 percent of the total cost. That is a requirement of the Archivist.

Senator Chiles. Regardless of the endowment, is there some plan that could be brought in? We know under the law that President Reagan's library will be built by the original money to be raised. Once that library is accepted, then the public from then on pays for the cost of maintenance and the future costs that are going to go forward.

At what point can we say, regardless of how much money they have raised, it is going to be too much to require the public to carry this forever?

Mr. AGRESTO. Technically, under the law, the Reagan Library is in the same category as the Carter Library and the Johnson Library, and in that way, it will be treated as such. I imagine that was the intent of Congress and also the intent of the President in signing the bill.

Nevertheless, from my briefings with the people at the Archives, my understanding is that the President Reagan Library Foundation seeks to raise a healthy endowment to help with the operations of the Reagan Library.

I think that is all to the good.

Senator CHILES. To help with the operations and maintenance of the library, or are you just talking about operations? Operations is one thing.

Mr. AGRESTO. To my understanding, maintenance, as well. But I really cannot speak with any assurance on that.

Senator CHILES. My concern would be maintenance, because operations are one thing, depending on how much faculty you intend to put there, how much staff you intend to put there, things that you are going to do like that.

Maintenance is something else, depending on what the size and design and everything else is.

Mr. AGRESTO. I do think that President Reagan, in signing that bill, and in his general philosophy as I understand it, believes that costs should be kept down; that nothing should be an unnecessary burden on the taxpayer. I am certain that his interests are the same as ours and yours.

Senator CHILES. There is nothing I would like to see better than the President abide by the spirit of the law that he signed. I have so indicated that. I would like to see that.

Mr. AGRESTO. It was my understanding from my briefings at the Archives, that he did intend to abide by the spirit of the law.

I have not spoken to anyone at the White House about this, however.

Senator CHILES. What do we know about the plans for the Reagan Library now? What do you know?

Mr. AGRESTO. I know what I have been told when I have spoken to people at the Archives about the Reagan Library; also with the briefing material that they have given me; and also newspapers clips that I save.

For example, I just saw that Stanford University said that they have set aside far less for what you might call monument space, the exhibition space, the paraphernalia. Far more space is to be devoted to the papers for researchers' use; that their intent was to make it a scholarly institution. I read that and I thought that was heartening.

So one thing I do know about this design is that they intend to make it a research library, primarily. The second thing I know is that the Archives itself received, if I understand it, some of the design plans. It was mentioned to me at one time, that the Archives, in looking over the architectual plans, noticed that there were closed carrels planned. So the word went back that this would not be appropriate, that open carrels were much more appropriate. We do not want to have the documents taken into closed rooms. All papers should remain out in the open. That was told to me, and I found it to be absolutely intelligent.

Senator CHILES. Do you know how large or how many square feet are involved in the present plan for the Reagan Library?

Mr. AGRESTO. They are talking, from what I gather, of over 100,000 square feet.

Senator CHILES. Pardon?

Mr. AGRESTO. Over 100,000 square feet.

Senator CHILES. My understanding is they are talking about 115,000.

Mr. AGRESTO. 115,000, yes.

Senator CHILES. The Johnson Library is 117,000 square feet. A football field, for reference, is 48,000 square feet, and the Pro Football Hall of Fame is 58,000 square feet. And the bill that we have now passed would limit future libraries to 70,000 square feet. What is your view of the authority that you would have to influence the Reagan Library proposal?

Mr. AGRESTO. I would hope to have the closest and most professional dealings with the Reagan Library Foundation. I would hope to be able to talk to them and be on professional and friendly terms with them, and I would very much hope that they would act, as I hear that they are acting from my briefings, within the spirit of the 1986 legislation.

I think there is no doubt that that legislation is totally appropriate.

Senator CHILES. Well, is it your view that the Archivist has the authority and could turn down or refuse to accept a library proposal which was unacceptable, say, because it was either too large or too costly to operate or to maintain annually?

Mr. AGRESTO. To confirm that I would have to talk with the lawyers at the Archives, to find out what my legal responsibilities were. I would certainly have an eye out for excess costs.

Senator CHILES. Before you are confirmed, I would like to know what your view is as to whether you have that authority. I am not saying how you would exercise it, but whether you have that authority. Let me tell you that I think the Archivist does have that authority and that responsibility if he makes a judgment that it would be too large.

As I said, I think he is the point man.

Mr. AGRESTO. I know further, if it is a fact that I have that authority, and if I do have that authority, then I will exercise it.

Senator CHILES. Again, I renew my request for you to let me know whether you find, after talking with somebody, whether you think you have that authority or not. That is very important for me to know.

Mr. AGRESTO. I will.[1]

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[1] Response to question from Senator Chiles may be found on p. 146.

Senator CHILES. Given the fact that it is President Reagan that has appointed you, do you think that you can exercise independent judgment in the case of his library?

Mr. AGRESTO. Yes, sir, absolutely, I do. I have been in Washington now 4 years. I have run an agency and helped run an agency that is—prides itself on its independence, on its peer review process, on the fact that we go by our rules, our regulations, by what that peer review panel tells us is quality.

As you know, because we are dealing with hundreds of millions of dollars, Congressmen may call up and say, "How is this project going? How is that proposal going?"

Our answer always is, "We are going by the process. We will let you know at the outcome."

I have learned how to be absolutely independent in the political arena when it comes to things in my authority. But I must add that up to the present time, in the 4 years since I have been here, I have never had a request from the White House to go one way or the other with a grant. And still I would have said exactly the same thing: "I'm sorry, it is totally inappropriate. This is an absolutely independent agency."

I think my job has been good training for this.

Senator CHILES. I want to be direct with you. I know from my history that it is not easy for an Archivist to stand up to a former or sitting President and negotiate conditions for his library. I can imagine it would be even harder to stand up to a President who has appointed you. My review of history tells me that President Johnson personally negotiated the condition that no fees would be charged to the public to visit his library. That is the only Presidential Library that has that. He negotiated that while he was still sitting as President, and that was one of those things that happened.

Now when I look at the trustees and the officials responsible for President Reagan's program, I can see where you would be dealing with some real power. We are looking at a tremendous list of most important people. Anybody would be flattered to have that kind of list, and it goes to show that the kind of respect and esteem that President Reagan has held. You find former and sitting officers of the Government; the Attorney General of the United States is on that list; Senator Laxalt is on that list. Well, it is just a list of Who's Who in much of America. Included, of course, on that is a Mr. Holmes Tuttle, who is the honorary chairman, and Mr. Tuttle is the father of a White House Official who interviewed you for this position, and a very close friend of the President's.

If you should have a disagreement with the President's friends, are you going to have the ability to remain independent?

Mr. AGRESTO. I think those who know me, Senator, know me to be fiercely independent and spunky as could be. I have great respect for the names that you have listed there, and I trust that they would have great respect for me.

But I know what my authority will be if I am confirmed, and I will stand on my authority. I have great respect for them, let me repeat that. But I will respect them as they will respect me.

Senator CHILES. You have spoken about your views on the Justice Department opinion on the Nixon regulations.

Mr. AGRESTO. Yes.

Senator CHILES. That opinion has a potential impact on President Reagan's papers, does it not?

Mr. AGRESTO. That opinion dealt with the Nixon tapes and materials.

Senator CHILES. Does it concern you that the Attorney General also sits as the vice chairman of the foundation to build President Reagan's library?

Mr. AGRESTO. Senator, if you needed a case study of my independence, I think that it would be that I looked over the opinion of the Office of Legal Counsel at the Justice Department, and having the highest of respect for them, still came to the conclusion that the sense of the Senate and the sense of this Congress was controlling, and I stood by the opinion on this committee and the opinion of this Congress on that matter.

I think that is good example of my independence, even given the fact that Mr. Meese is very high in place.

Senator CHILES. As you know, President Reagan is the first President to whom the 1978 Presidential Records Act applies. That means that the Reagan presidential papers belong to the public.

Mr. AGRESTO. That's right.

Senator CHILES. And that the Archives establish the public access procedures. So you may be the first Archivist called upon to exercise final administrative discretion under the law. The administration's view on the archival discretion is set forth in the Justice legal opinion.

It is that the Archivist works for the President and must do whatever the Chief says. What is your opinion? Will you be able to exercise independent discretion in regard to the fellow who is appointed?

Mr. AGRESTO. I think there is no doubt about that, Senator. I think there is no doubt that I was appointed probably because of his respect for my independence and my judgment, and that yes, if I am asked to do something, I think, inappropriate, I will say so and act appropriately.

Senator CHILES. Can you tell me what is your view of the National Historical Records Commission? That Commission is going to be up for reauthorization next year.

As you know, the administration has constantly recommended zero funding for the Commission. Do you anticipate supporting the administration, or do you anticipate supporting reauthorization?

Mr. AGRESTO. The NHPRC, Senator, is perhaps the part of the Archives itself that comes the closest to what we do at NEH, the National Endowment for the Humanities. We also fund documentary editions. We also fund the collection of papers. We also fund editors who do fine work in putting these books together.

We have done joint funding at NHPRC on a number of volumes. We funded the Booker T. Washington papers; we funded the Frederick Douglass papers; the Martin Luther King papers. I think I am speaking correctly that those were also funded by NHPRC. I am very comfortable with the work that NHPRC does. I find it very much like the work we do at the agency, and I find it extraordinarily fine work.

Senator CHILES. Do you think it should be reauthorized?

Mr. AGRESTO. I have no question in my mind that given the kind of work it does, I would like to see it continued.

Senator CHILES. My understanding was, and I just want to ask you this again: Are you going to try to see if you can get the foundation members for President Reagan's Library to come up with a voluntary building cost endowment so taxpayers can save some money?

Mr. AGRESTO. It was my understanding that they are trying that. I will help them and aid them in any way I can to achieve that goal. Yes, I really do want to work with them to see if that cost can be kept down. I think that is their intention. It certainly would be my intention. I really will work with them.

Senator CHILES. Another library that we will soon be coming forth with will be President Nixon's Presidential Library. Are you familiar with any proposals on that library?

Mr. AGRESTO. I know some things, Senator, yes. I know it is being planned for San Clemente, CA. I know some papers are at the Archives, yes.

Senator CHILES. Do you know what kind of space they are talking about?

Mr. AGRESTO. No, I don't know what kind of space they are talking about.

Chairman ROTH. Thank you, Senator Chiles.

Senator Eagleton?

Senator EAGLETON. I have no questions, Mr. Chairman, but I do have some items that I would like to put in the record, if I may. First, I would like to put in the Ronald Reagan Presidential Foundation names, the Board of Trustees, the Board of Governors, and, as Senator Chiles pointed out, Holmes Tuttle, Honorary Chairman thereof.[1]

Chairman ROTH. Without objection.

Senator EAGLETON. I would like to put into the record a series of editorials [2] pertaining to the nomination of Mr. Agresto. And then I would like to put into the record the letter [3] addressed to you, Chairman Roth, dated July 28, 1986 from the Comptroller General of the United States, and I would like to read just the first paragraph of that letter.

> Dear Mr. Chairman: This is in response to your letter dated July 15, 1986 requesting our opinion as to whether Mr. John Agresto, as Acting Chairman of the National Endowment for the Humanities from February 1985 to May 1986, was obligated to comply with Equal Employment Opportunities Commission Management Directives requiring the agency to submit data concerning the underrepresentation of minority groups and hiring goals for those groups for fiscal year 1984. For the reasons stated below, we conclude that Mr. Agresto was legally obligated to comply with these EEOC directives.

It is a seven-page opinion signed by the Comptroller General. I ask, Mr. Chairman, that the hearing record be held open for adequate time for Mr. Agresto to respond in writing to the questions that Senator Chiles propounded to him regarding what his legal powers would be as Archivist in the Reagan Library situation, and to give Mr. Agresto adequate time to consult, of course, with his attorneys, both private and at the Archives, and that Mr. Agresto's answer to the committee be made part of the record and, of course, be submitted to Senator Chiles.[1]

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[1] See p. 624.

[2] See p. 526. Additional editorials may be found beginning on p. 529.

[3] See p. 454.

Chairman Roth. Without objection.

Senator Eagleton. That is all I have except to review, once again, Mr. Chairman, the request for Senator Levin that Mr. Robert Tuttle, the son of Holmes Tuttle, be called as a witness before this committee; that if he be not subpoenaed, that he be asked to appear voluntarily, and that another day of hearings be held to allow two other witnesses who were interviewed for the job of Archivist to testify as to the political questions which were asked of them by Mr. Robert Tuttle.

Chairman Roth. On your last request, as I indicated, the Chair is not agreeing to the request. I do want to consult further with Senator Stevens, since he has been presiding over these hearings until today.

But I would point out that the inner deliberations of the White House are a matter of constitutional privilege, and no statute can give Congress the right to abrogate that privilege.

I would also want to point out that the witness list was, as I understand it, agreed to by the minority and the majority, that the opportunity has been provided for the minority to call such witnesses as they see fit.

Finally, I would just like to point out on the matter of the GAO, whose letter is going into the record, that this does contrast with the Department of Justice Civil Rights Division memo from 1983 which expressed the view that the EEOC could not require agencies to submit underrepresentation data and minority hiring goals. According to the Justice Department, these rules are contrary to clear administration policy, equal protection guarantees of the Constitution, and title VII of the Civil Rights Act of 1964. The memo goes on to state that the EEOC is without statutory authority to impose such employment goals on Federal agencies.

We would put this memorandum from Mr. Bradford Reynolds, Assistant Attorney General, Civil Rights Division, to Edward Schmults in the record, as well.[2]

Mr. Agresto. May I add, Senator, that when we received that legal memorandum from GAO saying that we were to comply with the law, we had already complied.

Chairman Roth. Yes. Again, I would just underscore what Senator Simon said in his opening statement here on this very point. Senator Simon said, "I am pleased to see that John Agresto has complied with affirmative action requirements of law. I think that is to his credit."

Mr. Agresto. If I could also add, in some ways, I wish the American Federation of Government Employees could have been here today, since they did retract their testimony against me. What happened was that their representative, the union representative from the local union of the National Archieves, came because he really wanted to find out first hand about discrimination at the National

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[1] See p. 146. Response to written questions submitted by Senator Mathias to Mr. Agresto may be found beginning on p. 150.

[2] See p. 353.

Endowment for the Humanities. And he came, and I gave him free reign to talk.

And he came back, and he told me that the National Endowment for the Humanities was not what it was made out to be; that we had upward mobility programs; that there were minority positions; that all the people he spoke to, black women and others, that he was impressed. Not that we have had a bad record but, in fact, the opposite, that we have a very good record.

On the basis of that first-hand evidence, eyewitness evidence, they retracted, he retracted their testimony against me. I am very proud of that.

Chairman ROTH. I think that is all the questions, Mr. Agresto. We appreciate your cooperation with the Committee. We want to thank you for being here today.

Mr. AGRESTO. Thank you.

Chairman ROTH. The committee is in recess.

[Whereupon, at 5:35 p.m., the committee recessed, subject to the call of the Chair.]

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

(The additional material contains information referenced in the hearing record and additional items submitted for the record following the hearing by Senators Mathias and Eagleton.)

TESTIMONY OF

JOHN AGRESTO

Presidential Nominee
Archivist of the United States

CONFIRMATION HEARING

before the

Committee on Governmental Affairs

United States Senate

August 13, 1986

Senator Stevens and Members of the Committee:

I am pleased and honored to be here today as the President's nominee to be Archivist of the United States. This is not simply an opportunity for me, but, I hope, the beginning of a new history for the Archives -- the chance for that institution to carry out its rightful task of service to the government, to scholars and to the public, and to take its place as one of the great cultural and educational institutions in this country.

The Committee has already been provided a copy of my resume. Let me only note that I received my undergraduate degree from Boston College and my doctorate in political science from Cornell University. I've taught courses on the American Constitution, American political history, and political philosophy at the University of Toronto, Kenyon College, and at Duke University. My scholarly work and teaching have centered around what Jefferson once called "the great texts of civic instruction" -- the documents and papers of the founding of this country and the meaning of the American experience.

For the last eight years I have been an administrator and public servant in both private educational institutions and in the government. With my family, I came to Washington in 1982 to help head the National Endowment for the Humanities. I am exceedingly proud of our work and accomplishments there. Partly under my leadership the NEH began what I think is the best program for the commemoration and celebration of the Bicentennial of the Constitution anywhere in this country. We've supported work in documentary editing on the great papers and texts of the Founding, including the Records of the Federal Convention. We've helped make available to everyone the writings of Americans from Jefferson, to Jane Addams and Susan B. Anthony, to Marcus Garvey, Booker T. Washington and Martin Luther King.

Since I have been at NEH, we began a series of about 50 summer seminars for high school teachers every year, to help reintroduce teachers to the great books and primary sources of this culture and of others, not only in order to improve classroom instruction but to help raise up the dignity and self esteem of the teaching profession generally. We began a Travel to Collections program to allow scholars to travel to archives and collections anywhere in the world. We began what I think is the best program directed at historically black colleges anywhere in this government. We began a program for younger scholars--for college students and high school juniors and seniors--to spend their summers working on research projects under the direction of teachers and professors. Recently we instituted a Younger Scholars program focussed around the Bicentennial of the Constitution to help students get a firmer grasp of the heritage and history of American life and thought. And just this past year, I started a program of Fellowships for College Teachers on the Foundations of American Society.

Because of my own personal interests in preservation and the overwhelming problems we face as a nation because of the deterioration of our documents, papers and books, my first act as acting chairman was to announce the establishment of the Office of Preservation at the NEH. The sad fact is that today many books will not outlast their readers. Through that office we hope to do our share to help preserve the works of this country from silent, rapid deterioration and destruction. Let me note that through this office at NEH we are now working with the Library of Congress in over half the states of the Union to catalogue and preserve all the newspapers published in America since the early 18th century.

We are also working with the Library of Congress on a film for television on conservation and preservation. We have helped develop a copying machine that will copy bound volumes without breaking the books' spines. We have supported the nation's only graduate program in conservation training, at Columbia University. And we have been working with the Council on Library Resources to microfilm those books, those volumes now most in danger of disintegration. In sum, under my leadership at NEH, we have helped train archivists, librarians, and administrators in preservation techniques, developed cooperative centers, and planned for national approaches to the problem of preservation.

As acting chairman, I took the lead and announced two major new initiatives, new directions for NEH. The first is designed to help stop foreign language illiteracy in this country by promoting a new program called Understanding Other Nations. And the second is an attempt to remedy the even more serious defect of ignorance about our own country. When we discovered that one-third of American high school seniors did not know when Columbus discovered America or when the Declaration of Independence was written, or that two-thirds of them could not identify Reconstruction, or the Emancipation Proclamation, or

Brown vs. Board of Education, then we knew more had to be done. So I began a major program entitled Understanding America at the Endowment. And, finally, in order to bring the best in the humanities to those people and students generally underserved by our programs, I set in motion a whole new endeavor called Access to Excellence in hopes of making these great books and ideas and sources known and appreciated in every corner of American society. At the NEH I have done my utmost not only to transmit the legacy of civilization to students and scholars and the public, but to do it in such a way that the best might be available to all.

I have listed these efforts of mine because I would like to think, as the Archives and Shakespeare both proclaim, that the Past is Prologue. That the energies and accomplishments I have brought to one place might serve as models of what can be done in this new area. I am a scholar of the American Constitution and the history of this country. I have worked to help preserve America's documentary heritage, and I have sought to give access to the works of this country and others to scholars and citizens at all levels. I think that is what the Archives needs today as well.

The Archives is a national treasure; but its light all too often shines in secret. My overarching goal is to collect, preserve, protect, and make available the greatness that that building contains.

In this regard, let me lay before this Committee some general observations about the meaning and place of the Archives in American life. As I once wrote in another context, "More than any other country, this nation of ours lives on documents. We are not a nation that lives by ancient prescriptions, we do not live in a country that evolved from dark and unspoken occurrences obscured by time. We trace our history as a people through documents: The Mayflower Compact, the broadsides of the colonial crisis, the Declaration of Independence, the Bill of Rights, the Emancipation Proclamation.... Indeed we have a document that proclaims itself a "Constitution" -- a document that, through its own efficacy "constitutes" us as one people. We are held together by bonds of paper. We see ourselves and govern ourselves by the written word. In a true sense, America is its documents--its family records, its business agreements, its naturalization papers, its Constitution, its letters to the editor."

I would hope, as Archivist, to help make it clear to Americans as best I can the greatness of its documentary heritage. I would hope to make the Archives not simply the repository of national papers, but a source of public information, public education, and public self-understanding. I will do my best to see to it that the Archives becomes not just a place of collection, but a focal point of distribution as well.

The Archives has labored under severe liabilities in recent years. Before independence, they were a small and scorned part of the General Services Administration, submerged and shunted aside. Moreover, the Archives labors under the problem of lack of space and deteriorating papers and texts. But most of all, the Archives labors under the problem of obscurity. What independence promised the Archives was not simply that it could pursue its records management functions more freely, or that it would now work on computerization or micrographics or preservation with greater discretion. What independence promised was the opportunity for the Archives finally to become what it can become, one of the major cultural institutions of American national life. The whole history of this country is in that building. We now have the chance and the task of getting that history out. I envision that within the next ten years there will be three major national cultural institutions ringing the mall here in Washington -- the Smithsonian, the Library of Congress, and the National Archives.

Yet, to do this the Archives must see itself not as beleaguered, not as insular, not merely as a repository, but as an active agent of historical education and cultural awareness. I envision an active Archives and I would hope to be an active archivist.

I say this not simply because I think all Americans should be interested in history or because I think all school children need to be exposed to the work of this country. I say it because the health of the Archives is in a real way an indicator of the health of democratic society itself. Democracy depends on knowledge and the diffusion of knowledge. It depends, most especially, on knowledge about the workings of government. If the Archives first mission is to collect and preserve, its second and maybe greater mission is to inform and disseminate. Democracies are never made healthier by knowing less. Our national liberty relies on public information and, conversely, we prove to the world the greatness of our way of life by our constant willingness to look at ourselves anew and hold our history up for inspection. This nation is great enough that it has nothing to fear and everything to gain from openness and self-scrutiny. I have a simple faith that tells me that the more we Americans know about our history, the prouder we will be of our heritage, and rightly so.

Those records and this history exist for the use of federal agencies. It exists for scholars. And it exists for teachers, for parents, and for all citizens. Indeed, the greatest users of the Archives are not the agencies or scholars, but ordinary citizens looking for help in filling out the record, the history of their families. Since they are the Archives heaviest users, let me comment on their situation first.

Genealogists remind us of the fact that our personal and our family histories are also the history of this country -- that the excitement and the pride we have in discovering our grandparents citizenship papers or the records of their immigration are part and parcel of the pride we have in this country itself. Family history can, sometimes, contain the records of great deeds, great thoughts, great art. But, more often, they contain the records of long labors, small but no less real heroisms, constancy, idealism, high hopes, persecutions, sorrows, tragedies, and stories once told that no one thought would ever be remembered again. Family histories are rarely the windows to academic intellectual history or standard political histories, but they are the treasure chest of the moral history of this nation. And for that reason, all of us -- parents, teachers, citizens -- have an interest in the progress of this work. The Archives has the obligation to help facilitate as best it can, the work of genealogical historians.

I want the Committee to know, however, that if confirmed, I will do my best to make the Archives open, available, and working for all Americans -- scholars, teachers, veterans, genealogists -- all Americans. Since I am not yet there, I cannot speak with full authority as to what programs and projects we will do and when, but I think I do owe this committee some insights into the kinds of projects I would try my best to pursue.

First, from my experience at NEH, I can say that more contact, more interaction, needs to take place between the Archives and the federal agencies. In large measure the Archives and the services it offers have been hidden from the agencies, especially the smaller ones. I would make it an item of first priority to talk to and work with the heads of all agencies, to help make the Archives' services and requirements better known.

Close contact with agencies and departments will not only be good for the orderly progress of business, but when the Archives knows what is going on, it can be of even greater service altogether. I read the other day where the Government Printing Office threw out tens of thousands of booklet copies of the Declaration of Independence and the Constitution. The Archives could have certainly used them and helped distribute them free to schools and teachers and students. That's only one example of the fact that the closer contact we have to the agencies, the better we can serve everyone.

I think the Archives can be of even greater service to the scholarly public and the public at large. At the NEH we learned how to put together superb summer seminars and institutes for high school teachers. We help teachers to read and study the best basic books in history and literature. I'm certain that the Archives can do even more with teachers than it currently does. I envision a number of seminars each summer for school teachers to work on primary source material. With the upcoming Bicentennial of the Constitution and the Bicentennial of the Bill of Rights, these seminars and workshops are simply a natural. And I see no reason why the Archives can't work with the NEH itself to make such projects work.

I mentioned the bicentennials that are coming up. The Archives has done and will continue to do good work in this area. But given the fact that the documents are there, at the Archives, I would hope to make the Archives the national focal point of public education in this area. There are other celebrations coming up -- for instance, 1990 is the 300th anniversary of the first newspaper in America -- in Boston in 1690. Some public notice and educational projects could be established to commemorate that fact too.

I understand that many of the records of the Second World War are still packed away in boxes in the record centers. These include records of the war itself, the holocaust, and the records of our diplomatic relations. I see no reason why there cannot be scholars working side by side with archivists in getting this material under control, catalogued, and better understood. Moreover, I see that the Archives has just acquired over two million prints and 500,000 negatives of pictures from the Second World War and the Korean War. How many citizens who fought in those wars, or who have relatives who fought in those wars, would like to know how to make some of those still pictures available to them? Again, it is a matter of getting the word out, far and wide.

At NEH we have helped fund a number of workshops for archivists. The archival community says, and rightly so, that more emphasis has to be placed on archival training for historians, archivists, and librarians. There is a need for more and greater instruction in preservation, in records management, in film conservation, in many of the areas that are of primary interest to the Archives itself. With independence, I see no reason why the Archives should not play an even greater role in expanding the educational opportunities for all who work with and manage archival materials.

Since I am a firm believer that the best scholarship has to rest on original sources, primary texts and original documents, I would like to talk to Congress at some point about the possibility of setting up an Archives Fellows program, not unlike programs at the Court, the White House, and Congress itself. I imagine a program where teachers, scholars, and professors can compete to spend a year doing primary research in the Archives unencumbered by other duties.

I imagine the Archives having greater contact with educational organizations such as the National Education

Association and the American Federation of Teachers in hopes of getting the Archives more involved with primary and secondary school teachers and with the writers of our school textbooks.

I would like, for my own part, to be able to hold classes at the Archives for college students, or even for high school students, on American political or constitutional history. And I now know a number of prominent historians, judicial experts, and even members of Congress whom I think I could call on to speak at such seminars. More broadly, given the constitutional bicentennial coming up, I'd like to have meetings at the Archives on our great Founding texts for citizens in and around Washington. "Evenings with the Constitution" -- if I may call them that -- could be a great way of introducing some of our fellow citizens not only to the great history of that document but to the glories of the Archives itself.

Some of these projects will cost money. But most require simply hard work and imagination. And that, above all, is what I will promise this committee -- my ideas and my work, because I think the Archives can be a national cultural and educational institution second to none in America.

Thank you.

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. Biographical Information

1. Name: John Thomas Agresto

2. Position to which nominated: Archivist of the United States

3. Date of nomination: May 7, 1986

4. Address:

Residence: 4246 Warren Street, N.W.
Washington, D.C. 20016

Office : National Endowment for the Humanities
Room 503
1100 Pennsylvania Ave., N.W.
Washington, D.C. 20506

5. Date and place of birth: January 7, 1946; Brooklyn, NY

6. Marital status: Married; Catherine Elizabeth Murphy Agresto

7. Names and ages of children:
Molly Agresto, 13
Meghan Agresto, 11

8. Education:

Brooklyn Preparatory, 1953-1963, High school diploma
(this school is no longer existing)

Boston College, Chestnut Hill, Massachusetts
1963-1967; A.B.

Cornell University, Ithaca, New York
1967-1974; Ph.D.

9. Employment record:

February 7, 1985	Acting Chairman National Endowment for the Humanities Washington, D.C.
February 4, 1985	Deputy Chairman National Endowment for the Humanities Washington, D.C.
June 1, 1982-- Feb. 4, 1985	Assistant Chairman National Endowment for the Humanities Washington, D.C.

June, 1979-- May 31, 1982	Projects Director National Humanities Center Research Triangle Park, North Carolina
June 1978-- June 1979	Fellow National Humanities Center Research Triangle Park, North Carolina
Sept. 1981-- Jan. 1982	Visiting Associate Professor Department of Political Science Duke University Durham, North Carolina
June 1972-- June 1978	Assistant Professor Department of Political Science Kenyon College Gambier, Ohio
June 1971-- June 1972	Visiting Lecturer Department of Political Economy University of Toronto Toronto, Canada
September 1968-- June 1971	Teacher (p/t) Cornell University Ithaca, New York

10. Government experience:

Woodrow Wilson International Center for Scholars Board of Trustees (ex officio)

President's Committee on the Arts and Humanities (ex officio)

Christopher Columbus Quincentenary Jubilee Commission (ex officio)

Japan-U.S. Friendship Commission (ex-officio)

Federal Council on the Arts and Humanities (ex-officio)

National Museum Services Board of the Institute of Museum Services (ex-officio)

National Archives Trust Fund Board (ex-officio)

National Advisory Council for the Center for the Book (ex-officio)

Board of Trustees of the American Folk Life Center, Library of Congress (ex-officio)

Federal Advisory Board of the Higher Education Survey System (ex-officio)

* There are other inter-agency committees on which I am listed as an ex-officio member. Others from the NEH staff serve on these pursuant to my delegation. These committees do not represent independently chartered initiatives.

11. Business Relationships: None

12. Memberships:

American Political Science Association
American Society for Political and Legal Philosophy
Atlantic Council of the United States

13. Political affiliations and activities:
   a) none
   b) none
   c) I have never made a political contribution to any party, organization, individual, etc., for over $50. I have made smaller contributions that, cumulatively, total between $50 to $100 per year.

Cumulative totals:	1981	$15
	1982	65
	1983	35
	1984	70
	1985	85

The major part of these donations were to the National Republican Party.

14. Honors and awards: Presidential Scholar, Boston College
Graduated Magna Cum Laude, Boston College
Herbert Lehman Fellow (Cornell Univ.)
New York State Regents Teaching Fellowship
Fellow, National Humanities Center
1986 Chair, E.S. Corwin Prize in Public Law, American Political Science Association

15. Published writings: See Attachment A (resume)

16. Speeches: See Attachment B (relevant speeches flagged (green))

17. Selection:
a) Do you know why you were chosen for this nomination by the President?

I believe it was because of his confidence in my experience as an administrator of an independent federal agency concerned with matters of history and culture, and because of my perspective as a scholar.

b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

The whole of my scholarly career has been devoted to understanding and writing about America, its heritage, its history and its great ideas. My career in public life has centered around furthering the understanding and appreciation of all cultures, especially our own, on the part of scholars, teachers, the public and other scholars. More particularly:

1. Although the NEH has supported the preservation of humanities material for some years now, last year we separated out our preservation efforts into a single office. In fact, my first duty as Acting Chairman 15 months ago was to hold a press conference on the matter of preservation. The main idea of this increased emphasis was not to *start* funding preservation projects -- NEH has done that for years -- but to *focus attention* on the problem of rapidly deteriorating research materials. And we have managed to draw attention to the problem. We now have separate and increasing congressional funding for this line in our budget. We have funded

some truly exemplary projects since last year. For example, we have supported the microfilming of Stanford's deteriorating Russian collection: the papers, pamphlets, and photographs from the early revolutionary period. We have supported the New York Public Library's project for the cataloguing and preservation of 2,000 newspapers; we are helping to suport the production of a documentary film for public television on the preservation crisis and preservation activities; we are working with the Rochester Institute of Technology to develop improvements on test methods for photo storage materials. We have, beyond all this, worked to provide national leadership in the field and to contribute to the formation of an active partnership between Washington and archivists and records administrators in state and local governments. And this type of relationship needs to be nurtured even further. Although I am not an archivist by training, I recognize the absolute importance of preserving the documentary record of America and have consistently worked towards that end.

2. My doctorate is in American constitutional law and political history from the Government Department at Cornell University. I am a widely recognized and published scholar in the field of early American history, political thought, and jurisprudence. The Archives is the foremost repository for those documents that help us know ourselves as a nation. I have worked with these documents, spoken out regarding their importance, and helped others -- scholars, teachers, and citizens -- better understand the history of this country and I look forward to continuing to do this.

3. In addition to the preservation initiative, this agency, under my direction, has also conducted programs in research resources, in access to collections, in travel to research collections, in documentary editing and publication, in newspaper microfilming and preservation -- indeed, in a great number of programs the Archives itself conducts.

Moreover, we have also started seminars and institutes for secondary school teachers; fellowships, public projects, and media programs in thoughtful commemoration of the Constitution's bicentennial; a younger scholars program to introduce students to historical and philosophical research; a program to bring the best in the humanities to those schools and students which, by reasons of poverty or geography, have been left out of the educational mainstream (presented on April 16, 1986 at our House Appropriation hearing); and as I announced last November at a press conference in the Senate joined by Senators Hatch and Simon, two nation-wide initiatives entitled "Understanding America" and "Understanding Other Nations." I mention these items to indicate that my overriding intent as a public servant these last four years has been to make available the best that has been thought and known in the humanities to as wide an audience as possible. I have especially endeavored to offer the humanities to teachers and their students. I believe that one of the most important charges to all those involved in historical scholarship and documentary preservation is to make the great wealth of such material known and available to all. The initiatives, the work, and the ideas that have gone into making the NEH one of the very best cultural and educational institutions in America will be a great source of help and experience for me as head of the Archives.

4. I have worked for the last four years in the most senior positions in this agency. In these positions I have drafted and defended our budgets, appearing before Congress for appropriations; worked with Congress on the reauthorization of the agency; and defended and explained this agency to government offices, the press, and the public. I have direct experience in managing a multi-million dollar cultural and educational federal agency.

I think these items help indicate the ways in which my experience and background affirmatively qualify me for this position.

B. Future Employment Relationships

1. Will you sever all connections with your present employers, business firms, business associations, or business organizations if you are confirmed by the Senate?

   YES

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain:

   I have agreed to write an article on the Constitution for Smithsonian Magazine which should be completed shortly. I have no other plans, commitments or agreements.

3. Do you have any plans, commitments, or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

   NO

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

   NO

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

   YES

C. **Potential Conflicts of Interest**

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients or customers.

   I have an agreement with Smithsonian Magazine to write an article for them on the Constitution.

2. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

   I do not believe there are any, however, see the attached letter of recusal to Mr. David Martin.

3. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

   NONE

4. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy.

   I have been involved in the annual NEH appropriation acts and reauthorization. These efforts are a part of my official responsibility.

5. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

   I have written a letter of recusal to David Martin of the Office of Government Ethics. A copy is attached.

6. Do you agree to have written opinions provided to the Committee by the General Counsel of the agency to which you are nominated and by the Attorney General's office concerning potential conflicts of interest or any legal impediments to your serving in this position?

   YES

D. **Legal Matters**

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group?

   NO

2. Have you ever been investigated, arrested, charged or held by any Federal, State, or other law enforcement authority for violation of any Federal, State, county or municipal law, regulation or ordinance, other than a minor traffic offense?

   NO

3. Have you or any business of which you are or were an officer ever been involved as a party in interest in any administrative agency proceeding or civil litigation?

   NO

4. Have you ever been convicted (including please of guilty or nolo contendere) of any criminal violation other than a minor traffic offense?

   NO

5. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

   I am providing the Committee with copies of my published writings. See attachment B.

NATIONAL ENDOWMENT FOR THE HUMANITIES
WASHINGTON, D.C. 20506

JOHN AGRESTO

OFFICE:
Deputy Chairman
National Endowment for the Humanities (NEH)
Room 503
1100 Pennsylvania Avenue, N.W.
Washington, D.C. 20506
(202) 786-0314

BIRTHDATE: January 7, 1946

PERSONAL: Married (Catherine, 2 children)

****

EDUCATION:

Ph.D.	Cornell University, 1974 (Government) (Herbert Lehman Fellow; New York State Regents Teaching Fellowship)
A.B.	Boston College, 1967 (Political Science/History) Magna Cum Laude

PROFESSIONAL EXPERIENCE:

February 7, 1985 --	Acting Chairman of NEH
February 4, 1985 --	Deputy Chairman, NEH

Provides executive assistance to the Chairman on matters pertaining to the agency's relations with the Office of Management and Budget, participates in the development and formulation of Endowment policies and budgets and makes recommendations to the Chairman thereon; negotiates policy issues between NEH and other Federal agencies; reviews Congressional testimony and participates in the defense of agency policies before Congressional committees; serves as Acting Chairman in the absence of the Chairman and as the agency's Freedom of Information Act Officer; supervises the Office of Public Affairs, the Office of Congressional Affairs, and the Office of Planning and Budget.

PROFESSIONAL EXPERIENCE (con't)

1982-- Feb. 1985	Assistant Chairman, NEH Duties include assisting the Chairman in the planning and formulation of Endowment policies and the execution of agency activities, maintaining contact with other Federal branches and agencies, supervising various NEH offices.
1979-82	Projects Director, National Humanities Center Research Triangle Park, North Carolina Duties included general administration, heading the various seminars of scholars, organizing and chairing conferences held at the Center, editing proceedings, directing special studies, and initiating and maintaining contact with other centers, institutes, and universities.
Fall, 1981	Visiting Associate Professor, Department of Political Science, Duke University, North Carolina
1978-79	Fellow, National Humanities Center, Research Triangle Park, North Carolina
1972-78	Assistant Professor, Department of Political Science, Kenyon College, Gambier, Ohio
1971-72	Visiting Lecturer, Department of Political Economy, University of Toronto, Canada

PUBLICATIONS:

The Supreme Court and Constitutional Democracy, Cornell University Press, 1984.

Liberty and Equality Under the Constitution, editor and contributor. The American Political Science Association and the American Historical Association, 1983.

The Humanist as Citizen: Essays on the Uses of the Humanities, co-editor (with Peter Riesenberg, Washington University) and contributor. Fall, 1981, The University of North Carolina Press and the National Humanities Center.

PUBLICATIONS:
(con't)

"The Humanities and the Condition of American Education," The Journal of Family and Culture, Vol. I., No. I., Spring, 1985. Reprinted, Education Policy Insights, Vol. I., No. 3, June, 1985.

"Land Where Our Fathers Died," The Washington Times, April 3, 1985.

"Why is the Constitution Worth Revering?" in The Constitution and the American Polity, David E. Marion, et. al, editors, Hampden-Sydney College, March, 1985.

"Funding the Humanities," The Quarterly, Summer, 1983.

"James Madison and the Revolution in Republican Liberty," The South Atlantic Quarterly, Spring, 1983.

"Preface" to Barbour, Brooks, Lakoff, and Opie, Energy and American Values, Praeger, 1982.

"Technology and the American Dream," The Community College Review, Fall, 1982.

"Teaching Compassion," The American Educator, Summer, 1982; Reprinted, Ethics and Education, February, 1983.

"The American Founders and the Character of Citizens," Character, Spring, 1981. Reprinted, The American Educator, Summer, 1981. Reprinted, Character Policy, An Emerging Issue, Edward Wynne, editor, September, 1982.

"Hamilton vs. Jefferson -- This Time It's Energy," The New York Times, op.ed., Sunday, August 23, 1981.

"The Limits of Judicial Supremacy," Georgia Law Review, Spring, 1980.

"Art and Historical Truth," The Journal of Communication, Autumn, 1979.

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PUBLICATIONS:
(con't)

"Liberty, Virtue, and Republicanism, 1776-1789." The Review of Politics, October, 1977.

"Teaching Introductory Politics." co-author, Division of Educational Affairs Newsletter, The American Political Science Association, Fall, 1977.

PUBLISHED INTERVIEWS AND NEH-RELATED ARTICLES:

"Understanding America" -- "Understanding Other Nations," Magazine of History, Organization of American Historians, Summer Issue, 1986, forthcoming.

"Agresto Advises Sociologists Seeking NEH Support," An interview with Carla B. Howery, Footnotes, The American Sociological Association, Vol. 14, No. 4, April, 1986.

"NEH and the 1992 Celebration," Encuentro, (Columbia Quincentenary Newsletter), Vol. I., No. 2, Fall, 1985.

"Political Scientists and the N.E.H.: An Interview," P.S., Winter, 1983.

"The Humanities and Social Science," P.S., Summer, 1983.

PROFESSIONAL PAPERS:

"Leo Strauss and American Conservatism," American Political Science Association Annual Meeting, Chicago, Illinois, September, 1983.

"The Rhetoric and Reality of Judicial Power," American Political Science Association Meeting, Denver, Colorado, September, 1982.

"The Case Against Judicial Activism," (a debate with the Executive Director of the American Civil Liberties Union), The American Political Science Association Meeting, New York, New York, 1981.

"Popular Sovereignty and Judicial Power," The American Political Science Association Meeting, Washington, D.C., 1977.

PUBLIC ADDRESSES:

I. Politics and Philosophy

"The Foundations of American Democracy: The Declaration of Independence and the Constitution," Lecture Series, The Center for the Study of the Constitution, Congress Hall, Philadelphia, Pennsylvania, January 22, 1986.

"Why is the Constitution Worth Revering?" Lecture, Hampden-Sydney College, March, 1985. (Later published in The Constitution and the American Polity, David E. Marion, et. al, editors.)

"Chief Justice John Marshall and the Meaning of the American Constitution," Lecture, Brigham Young University, May, 1984.

"Problems of Constitutional Interprepation," Lecture, Tulane University, February, 1984.

"Litigation, Court Delays and the Character of American Society," Keynote Address, Nebraska State Bar Association Conference, January, 1982.

"Ethics and Law Enforcement," F.B.I. Academy, Quantico, Virginia, November, 1981.

"The Achievement of the Founding Fathers," I.B.M. Corporation, Research Triangle Park, North Carolina, July, 1981.

"The Future of American Democracy," Series of lectures in adult education, Honolulu, Hawaii, October, 1980.

"America's Founding Principles and America's Future," Address, Conference on American Values and the American Future, Falmouth, Maine, Spring, 1979.

"Poetry, Philosophy, and Politics," Keynote Address, National Association for Humanities Education, Jacksonville, Florida, Spring, 1979. (Later published as "Lincoln, Statesmanship and the Humanities," The Humanist as Citizen.)

"Jefferson and Civic Morality," North Carolina State University, Raleigh, North Carolina, Fall, 1978.

PUBLIC ADDRESSES (con't)

"Liberal Democracy and Moral Character," Public Policy Association Address, The University of North Carolina at Chapel Hill, November, 1978.

II. History, Education, Humanities and Science

"Our Memory at Risk," Keynote Address, New York State Archives and New York State Library Conference, Albany, New York, May 15, 1986. (To be reprinted in Preservation News, Library of Congress, forthcoming.)

Remarks, 1986 Jefferson Lecture Series, Washington, D.C. and Chicago, Illinois, May 1986.

"Doing Justice to the Humanities," Keynote Address, American Council of Learned Societies Annual Meeting, New York, April 11, 1986.

"In Celebration of the Humanities," Symposium Commemorating the Twentieth Anniversary of the NEH, George Washington University, Washington, D.C., February 12, 1986.

"The Progress of Culture," Keynote Address, National Association of Schools of Music Annual Meeting, Houston, Texas, November 25, 1985. (To be reprinted, Proceedings, The 61st Annual Meeting, forthcoming.)

Remarks, National Federation of State Humanities Councils, Kansas City, Missouri, November 22-24, 1985. (Edited as: "Restoring the Humanities.")

Remarks, Twentieth Anniversary of NEH, Hosted by Folger Shakespeare Library, November 6, 1985.

Remarks, 1985 Jefferson Lecture Series, Washington, D.C. and New Orleans, Louisiana, May 1985.

"The Crisis of Liberal Education," Kenyon College, February, 1985. Revised and reprinted as "The Humanities and the Condition of American Education," The Journal of Family and Culture, Vol. I., No. I., Spring, 1985.

PUBLIC ADDRESSES (con't)

"The Humanities and the Condition of American Education," Nevada Humanities Committee, Reno, Nevada, April 10, 1985. (To be reprinted, Halcyon, forthcoming.)

"The State of American Education," Symposium on Educating the Man and the Citizen in America, Intercollegiate Studies Institute, Boston College, March 29, 1985.

"Teaching Latin and Greek," Keynote Lecture, New England and Mid-Atlantic States Classics Association Meeting, Yale University, April, 1984.

"New Directions in Humanities Education," Claremont-McKenna College, December, 1983.

"Science and the Prospect for Democracy," Keynote Lecture, YMCA Board of Directors, Baltimore, Maryland, November, 1983.

"The Crisis in American Education," The Foundation Endowment, Cumberland Lodge, Windsor, England, October, 1983.

"Ethics and Engineers," Oak Ridge National Laboratory, WATTEC Conference.

"Technological Progress in American Society," North Carolina Adult Education Association, September, 1981.

"What the Humanities Can and Cannot Do for Doctors," Moses Cone Memorial Hospital, Greensboro, North Carolina, September, 1981.

"Technology and Human Values," Keynote Address, North Carolina Council on Women's Organizations, Raleigh, North Carolina, November, 1979.

III. General

Remarks, Ingersoll Prizes Awards Banquet, Chicago, Illinois, November 22, 1985.

Opening Remarks, Save Cambodia Reception, Russell Senate Office Building, April 24, 1985.

PUBLIC ADDRESSES (con't)

Remarks, Presentation of the Congressional Gold Medal to Elie Wiesel, The White House, April 19, 1985.

Naturalization Ceremony, United States Court of the District of Columbia, Judge Norma Johnson, Presiding, March 12, 1985.

"Teaching American Democracy in the Schools," Address, American Historical Association Meeting for High School Teachers, November, 1983.

"Teaching Courage and Honesty in the High Schools," National Humanities Faculty Lecture, Portland, Maine, February, 1981.

"Compassion and Ethics Education," Presentation to the American Federation of Teachers, Washington, D.C., November, 1980.

PROFESSIONAL AFFILIATIONS:

American Political Science Association
American Society for Political and Legal Philosophy
Atlantic Council of the United States
Chairman, E.S. Corwin Prize in Public Law, American Political Science Association, 1986

PRE-HEARING QUESTIONS FOR JOHN AGRESTO

ANSWERS

****

I. Nomination Process and Potential Conflicts

1. **Is there any issue currently under consideration by the National Archives from which you may have to disqualify yourself? If so, please explain.**

   I am not aware of any such issue.

2. **How were you selected to serve as Archivist of the United States? Were any conditions, express or implied, attached to your nomination?**

   I was selected following a lengthy process that involved numerous interviews with personnel officials at the White House. These interviews assessed my interest in and qualifications for the position of Archivist. There were no conditions, express or implied, attached to my nomination.

3. **Have you made any specific commitments with respect to the basic policies and philosophy you will seek to implement as Archivist? If so, please describe these commitments and to whom they were made.**

   No.

4. **Why did you take this appointment to be Archivist?**

   As I have indicated in an earlier submission to the Committee, my desire to work as Archivist is rooted in my reverence for the documents of American history and my belief and experience as a scholar in the unparalleled importance of preserving the rich documentary heritage of this nation.

   Moreover, I wish to amplify the work I did at NEH of increasing public awareness and appreciation of the great history of this country and ideas that have shaped it. Increased dissemination, then, of the wealth of information contained in the Archives is also among the highest of my goals.

5. **Why do you feel that you are particularly well qualified to serve in this position?**

The whole of my scholarly career has been devoted to understanding and writing about America -- its heritage, its history, its ideas. I have not only taught American political science and constitutional history, but am a scholar and writer in the field as well. Furthermore, my career in public life has centered in large part around promoting an appreciation and understanding of the history, culture, and the documentary heritage of this country through grants to scholars, teachers, schools, and the public at large.

For example, in my position as a senior official at NEH, I announced and carried forward one of the most ambitious funding projects in document and text preservation in America. We are currently spending about $4 million a year in this very important area.

In addition to the preservation initiative, the NEH, under my direction, has continued to conduct and expand its programs in research resources, in access to collections, in documentary editing, and in the microfilming and preservation, through projects in the states, of all of America's newspapers, going back to the beginning.

Last year we also announced an agency-wide program entitled "Understanding America." Through this means we have started to bring even greater numbers of teachers, students, and scholars to an appreciation of the heritage and history of America.

Moreover, under my leadership at NEH the endowment became generally recognized as the lead agency in the celebration and commemoration of the 200th anniversary of the American Constitution. Our support has ranged from funding for such works as The Founders' Constitution and the Encyclopedia of the American Constitution, to help with the revisions and reissuing of Farrand's Records of the Federal Convention, to fellowships for professors to study and write on Constitutional issues, to summer seminars for teachers on the original texts surrounding the constitution and the contemporary debates, to summer research projects in constitutional history and philosophy for high school and college students, to television shows and radio programs for citizens of all ages on the meaning of constitutional government. I would hope to carry this excitement for the Constitution -- and for the 200th anniversary of the Ratification of the Bill of Rights, soon to follow -- with me to the Archives.

In sum, I feel particularly well qualified to serve in this position because of my own scholarly and professional career as a widely recognized and published scholar in the field of American political and constitutional history and because I have been able, as a public servant these last four years, to help bring my own excitement for our history, our heritage, and our documents to all Americans at all levels.

II. The National Archives

1. **What do you believe to be the role and the responsibilities of the National Archives?**

The role of the National Archives is to manage the records of the federal government and to preserve the documents of the American experience. Its primary responsibility is to make those records available for governmental use and accessible to the public in order to advance a better understanding of the workings of our government and a knowledge of American history.

2. **What do you believe is the Archives primary mission and its most important function?**

Its primary mission has two facets. Its enormous workload consists in the collection, organization, and preservation of the nation's documentary history for public purposes, including use by government agencies. It does this through the various record centers, the Presidential libraries, the publication of public documents and regulations, and through the facilities of the National Archives itself. These tasks -- collecting, organizing, and preserving -- in turn facilitate the second facet of its mission: opening these records to the general public and the scholarly community. In a democratic nation the Archives serves as one of the most important means by which the people can see and evaluate the workings of their own government.

3. **What, in your view, are the most pressing problems facing NARA?**

It will require some time on the job to assess priorities, but I can comment that my experience with preservation initiatives at NEH has left me convinced that the nation's documentary collections are in a precarious position. Immediate steps must be taken not only to ensure that our national collection does not deteriorate further, but also to educate the public on the pressing need to take care that the irreplaceable does not crumble before our eyes. If confirmed, one of my first initiatives as Archivist will be to assess the status of the NARA's preservation and conservation efforts and to take whatever steps are necessary to protect this paper legacy from the past. In addition to preservation of what is already in our custody, a most important function is the appraisal of current records, not only paper records, but all of the various media used in record keeping. The generation of these records at an increasingly enormous rate places immense problems, both of judgment and of sheer space on the Archives.

Finally, NARA labors under the problem of relative obscurity. Yet, with independence, this problem can now become an opportunity -- the chance to work to raise the visibility and reputation of the Archives as a prime repository of our nation's history, as a significant part of the intellectual culture of this country, and as an educational resource for teachers, students, and all citizens.

4. **What do you feel are the most important functions of the position to which you have been nominated?**

The Archivist must help government agencies get a grasp on their record management problems in order that key documents not be lost to the government or the public and provide access for government agencies, the scholarly community, and the public. Moreover, the Archivist must set the tone for the entire agency. He must be at the forefront of the effort to help inform the public about the documentary wealth at its fingertips. He must encourage the scholarship that supports national understanding, and serve as the prompter of curiosity -- especially among younger Americans -- that guarantees that "access" is not merely a slogan, but a dynamic opportunity made available to and taken advantage of by thousands of Americans.

5. **Please describe your understanding of who the principal user groups of the Archives are. Describe their needs and their use of NARA.**

I realize, of course, that the principle user groups are the federal agencies whose records I would be responsible for maintaining. As custodian of their records, service to government agencies is of prime importance. Nevertheless, to label some groups as "principal" may connote a second-class status for other groups that I believe is inimical to the idea of a truly national Archives. Of course, the scholarly community can be expected to be regular visitors to the Archives. Genealogists and military veterans are substantial, important users of documentary records. But it may be the single visit by a young tourist strolling past the Constitution that sparks a lifelong commitment to understanding the American experience. These single visits are as important as the prolonged residence at a work carrel by a Pulitzer Prize winning historian. It will be my goal to administer the Archives -- indeed, all of the eleven archives branches around the nation -- so that every "user" finds it a convenient and accessible place at which they can comfortably pursue their goals. Indeed, it will be my goal to increase substantially the number of Americans who consider the Archives their Archives.

6. **Do you believe that any changes in the functions and authority of the Archives are warranted?**

Because the hard-won independence of NARA is so recent an event, I do not believe it is time to issue recommendations concerning fundamental changes in the agency's structure of operations. The legislation establishing NARA appears to me to have been the result of an extended round of hearings, long consultations with the archival and scholarly communities, and the presentations of experts in affected fields. The present structure should be given an opportunity to work out the growing pains common to an infant organization before reassessment is undertaken. If confirmed, I will, of course, keep Congress informed of any compelling ideas for the refinement of the Archives' operations.

7. **What do you believe to be the relationship and responsibilities of the Archives to (a) the President; (b) the Congress; and (c) the executive agencies, especially with respect to OMB, the Department of Justice, and GSA?**

With independence, the Archives takes its place as a fully independent agency. In order to fulfill this mandate of Congress an independent agency must keep a necessary distance from the more political agencies of government. For example, an independent agency does not have to consult with executive branch officials on questions of internal organization or agency policy.

Although the President nominates the Archivist, and can remove him from office, it seems to be the clear intent of Congress that the Archivist, and under him the Archives as a whole, use their own best independent professional judgment on matters under their purview.

Congress has, of course, oversight over the conduct and operation of all agencies and over annual appropriations. In this latter role, OMB plays a part as well, since the budget the agency submits must bear some reasonable relation to overall governmental needs and capabilities. The Justice Department is charged with the responsibility of litigating, when necessary, on behalf of the agency. Regarding GSA, that agency no longer has custody or control of the Archives building or of future record centers. NARA is, moreover, in the process of taking over the operation from GSA of all Presidential library buildings. NARA does pay GSA for services on existing records center buildings. Moreover, although NARA is responsible for ensuring that agencies adequately document their activities and schedule their records for disposition, GSA remains responsible for the efficient and ecomonical creation, maintenance and use of records.

8. **Do you view the Archives as an independent agency within the executive branch? What authority do you believe the Archivist has in terms of discretionary decision making? What types of decisions, in your opinion, are not within the discretion of the Archivist to make?**

I do view the Archives as an independent agency within the Executive Branch. It seems clear that the legislation that established the Archives as an independent agency vested in the Archivist, and in the Archives as a whole, significant discretion in the ability to establish programs and priorities, to review documents and papers, and to decide on optimal ways of making the important documents of our government available to scholars and the public.

Although the last part of this question is so broad as to be impossible to answer completely, I can certainly say that the Archivist may not use his discretion to avoid the clear charge of the law, to invade protected privacy, to disregard the agency's own procedures or regulations, or to discard his honest and professional judgment.

9. **What steps will you, as Archivist, take in terms of your records management authority to encourage other executive branch agencies to create and maintain records which will facilitate their ultimate screening, preservation, and disposal?**

Although I will need some time in the position to assess the full scope of the matter, it seems that more might be done in the area of contact and communication with each of the federal agencies. Coming from a small agency I know that we can often be lost in the shuffle, or relate to the Archives only by memo. The first best step in encouraging -- in educating -- the agencies to create and maintain proper records may well rest in better communication and conversation with all agencies on what is needed and expected. I know that NARA conducts workshops and that staff visits and inspections are an integral part of the current process. Still, one of my first initiatives will be to review NARA's programs in this regard with an aim towards expanding these efforts to the point where the return in terms of efficient and effective records management more than pays back our investment. I would hope to meet personally with the heads of federal agencies and to re-establish the Archives' good will with each each of them.

10. **In your view, who has the right to determine what constitutes a "federal record"? What sorts of documents do you believe should and should not be defined as "federal records"? Do you believe any changes are needed in the Records Management Act? If so, please describe.**

Congress has determined that federal records are those documents that are generated, created, produced or kept by a public official in the administration of the powers and duties of public office. Such documents may take the form not only of papers and books, but also of maps, photographs, machine readable materials, and other media. (See 44 U.S.C. Ch. 33, sec. 3301.) This seems to me to be an adequate definition of what constitutes a federal record. The law further states that "the Archivist shall establish standards for the selective retention of records...." (44 U.S.C. Ch. 29, sec. 2905(a)). Such determinations are, of course, appealable to the courts and there are times (as in the Kissinger case) when the decisions will go against the Archives. While I will surely bring to the attention of Congress any changes I feel may be necessary in the Records Management Act as time goes on, it would be rash on my part to request changes before I had the experience of trying to work within the framework of the current law.

11. **Do you believe any changes in the Freedom of Information Act are warranted? How, as Archivist of the United States, would you act to reduce the costs and increase the benefits of FOIA with respect to federal records?**

    My experience with FOIA at NEH has been a good one. NEH has never found the administration of the Act to be burdensome or in conflict with the efficient management of the agency. As a result, I have no suggestions or changes to FOIA. What now may be needed is a long period of stability so that the requirements of FOIA become settled and thus easier to administer.

12. **What criteria would you, as Archivist, use to declassify federal records?**

    I believe that the Archives has an affirmative duty to make public records available to the public as rapidly and completely as possible. As William Clark wrote to the Administrator of GSA in 1983, the overall aim should be "to classify only that information requiring national security protection and to declassify any documents that do not require such protection."

    In pursuit of these ends the Archivist is, by law, required to establish standards for the selective retention of records of continuing value and to assist federal agencies in applying the standards to records in their custody. The Archives carries out a records declassification program for records in the custody of the Archives and systematic review of the holdings is performed by the Office of the National Archives at NARA using the originating agency's declassification guidelines. Under Executive Order 12356 a specific date for declassification is set by the original classification authority at the time the information is originally classified; these dates remain in effect unless extended by an authorized official of the originating agency. Under this order, except in certain limited areas such as intelligence files and cryptological information created after 1945, NARA systematically reviews for declassification records more than 30 years old.

13. **What steps would you take to assure that the decision - making process of the Archivist with respect to screening and appraisal of records is free of external influence by the creating agency, or other executive branch agencies, by Congress, or by any other person?**

    Freedom from unacceptable pressures is the result, I think, of a hard won reputation that such pressures are at best useless and can often be counterproductive.

While serving at NEH, I learned that consistent application of the principle that an agency is not receptive to unacceptable influence promotes a near complete freedom from those pressures. I will continue the independent, non-partisan character of the Archives set down so well by previous Archivists, and act quickly to ensure that this same atmosphere of hostility to the inappropriate request or suggestion remains a fixture at NARA. This can be accomplished in a number of ways, the most important being the example set by the Archivist, an example I intend to set from my first day in office, if I am confirmed.

14. **What criteria would you, as Archivist, use in determining which federal records should be made available to the public and the timetable for making such records publicly available?**

Are there certain federal records which should be protected from public access for all time? Describe.

Are there certain federal records which should be made publicly available as soon as possible? Describe.

Are there certain federal records which should remain confidential for a fixed period of time? Describe.

I think it indisputable that the general ideal is for public documents to be made publicly available as expeditiously as possible. Under this principle the practice must be to balance the rights of individuals and the rights of the government, the rights of the people to open access and the needs of scholars. Towards this end the availability of public federal records are governed by general record schedules currently in place and in some instances by laws governing public access. I personally view the Archives as an open research facility and as a source of public information, so my own bent is always towards greater access rather than less.

In this regard I cannot conceive of any record that should be withheld "for all time." The two main tenets must be to preserve and to make available. There are federal records that should be, and are, made available as soon as possible. Many of the records of my own agency, such as listings of panelists or grant recipients, are immediately available to the public. And surely certain records should remain confidential for certain periods of time as we balance the rights of individuals, the government, the public, and scholars. Census records, personnel files, and sensitive diplomatic and national security records would fall into this category.

15. **In a time of restricted budgets and expanded demands on the National Archives, do you believe user fees for locating records and helping researchers and other executive branch agencies are a valid way of off-setting costs?**

Generally speaking I think that user fees undermine the notion of open public access to their own public documents and would inevitably discriminate against the less well off individual and institution. Often the cost of administering such fees would seem to offset the benefits. It would require an overwhelming demonstration of fiscal need for me to support user fees for the general public or for scholarly research.

16. **In your view, is it NARA's responsibility to preserve and make publicly available purely "informational" type records? Why or why not?**

I may be misreading the question, but it seems to me that NARA has a responsibility to preserve and make available "informational" type records -- records that are the results of agency operation -- as well as "evidentiary" records or materials -- records of how a particular agency operates. To take my own agency, NEH, as an example, I do not see how scholars, the public, or other parts of the government could get a true picture of the workings of this agency without both "evidentiary" records (for example, our various guidelines) and "informational" records (for example, our lists of grantees).

17. **Do you believe archivists should be certified? If so, by whom? What professional, educational, or training experience do you believe is a necessary minimum to qualify as an archivist?**

I recognize that there is considerable discussion in the field over the certification of archivists, with strong feelings on all sides. The degree to which an archivist should be a historian or political scientist, or have some additional background in library science or information sciences, is a question of continuing discussion, and properly so. But it is not an area into which I feel the national government should enter or offer guidelines. Nor do I feel that NARA should take any position on who, if anyone, should make such certification. (However, this does not mean that NARA could not be the locus of workshops, seminars, or institutes in history, political science, or library science in order to help improve the capabilities and experience of people in the archival field.)

III. Relations with Congress

1. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?

   Yes.

2. Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if you are confirmed?

   Yes.

NATIONAL ENDOWMENT FOR THE HUMANITIES

WASHINGTON, D.C. 20506

September 15, 1986

The Honorable Lawton Chiles
United States Senate
Washington, D.C. 20510

Dear Senator Chiles:

Thank you for the opportunity to respond in writing to the question concerning Presidential Libraries that you posed to me during the hearings on my nomination to be Archivist last week.

Following a careful review of the statute and consultation with NARA's legal services staff, I have determined that the Archivist does possess the authority to refuse to accept a library facility should the Archivist determine that it would not be in the public interest to accept the facility. The grounds for such a decision could legitimately rest on the Archivist's concern over the costs of future upkeep of the facility. Congress also possesses the authority to reject an offered facility.

Let me emphasize, however, that my preparation for my hearings revealed no immediate cause for concern with regard to former President Nixon's or President Reagan's facilities. It is my understanding that the Reagan Library project has dedicated itself to keeping to the spirit of the 1986 Act. I believe I will be able to continue to enhance the cooperation between NARA staff and those charged with developing the Reagan Library so that neither I nor the Congress will be faced with the necessity of rejecting a proffered facility. For your information, I am enclosing NARA's advice to me on this matter.

Again, my thanks for this opportunity to respond. It is my sincere hope that my nomination will receive bipartisan support, including yours.

Sincerely,

John Agresto

John Agresto

Enclosure

cc: Senator William Roth

National Archives

Washington, DC 20408

SEP 15 1986

Dr. John Agresto
Deputy Chairman
National Endowment for the
Humanities
1100 Pennsylvania Ave., NW., Rm. 503
Washington, DC 20506

Dear John:

You forwarded to us a question about the Archivist's authority which was posed to you by Senator Lawton Chiles in the recent confirmation hearings. I have referred this question to the Acting Director of our Legal Services Staff. A copy of his opinion is enclosed.

Sincerely,

FRANK G. BURKE
Acting Archivist
of the United States

Enclosure

National Archives and Records Administration

National Archives

Washington, DC 20408

Date : September 15, 1986
Reply to Attn of : NSL
Subject : Presidential Libraries and President's Authority
To : N

You have requested this office to respond to an issue raised during the recent Senate confirmation hearings regarding Mr. John Agresto's nomination to be Archivist of the United States. The question, posed by Senator Chiles, asks:

> "Under current law, and as regards to the Library proposals and respective library facilities of former President Nixon and incumbent President Reagan, does the Archivist have the authority to refuse to accept a proposal or a respective facility if the Archivist determines it is in the public interest to do so?
>
> "For example, if the Archivist determines that a Library facility is excessively large, thereby unduly increasing future operating and maintenance costs, could the Archivist, on behalf of the Federal Government, refuse to accept the facility?"

The Presidential Libraries Act, 44 U.S.C. 2112, authorizes the National Archives to negotiate with a donor foundation concerning the donation of a Presidential archival facility. Once the donor foundation proposes a facility which the Archivist considers to be in the public interest, the Archivist then submits a report to the Congress pursuant to 44 U.S.C. 2112(a)(3). Pub. L. No. 99-323, sec. 3(a) (1986). After the report lies before Congress for the required period of time, or, in the alternative, if Congress passes a joint resolution, the Archivist may accept title to the proposed Presidential library.

We understand, from the context of the confirmation hearing, that the subject question pertains to the Archivist's authority during the negotiation stage of the library planning process. In our opinion, the Archivist is authorized to require a donor to meet any lawful condition, including a facility size limitation, before approving a donor's proposal and forwarding a report to Congress. See 44 U.S.C. 2112.

If you have any further questions on this matter, please contact me at 523-3618.

Gary L. Brooks
GARY L. BROOKS
Acting Director
Legal Services Staff

RESPONSES TO WRITTEN QUESTIONS SUBMITTED BY SENATOR MATHIAS

1. **You were asked in a pre-hearing question who has the authority to determine what is a federal record.**

   Your response described the statutory definition of a federal record without going to the question of who -- what government official -- determines what is a federal record.

   What is the Archivist's statutory role and responsibility in deciding what is a federal record?

The boundaries of the Archivist's statutory role and responsibility on deciding what is a federal record are not entirely clear. For example, in the Kissinger matter it was determined that the Department of State rather than the Archivist would determine what are records of the Department of State. The House version of the Archives independence bill, in Sec. 204, did indeed contain language that gave to the Archivist final authority to determine what documents were records and permitted him access to agency materials in order to make such determinations. This section was, however, deleted in the final bill. [See Cong. Record, Oct. 4, 1984, H.11410 and H.11411 (Congressman Brooks and Congressman Kindness)]. Thus, while the Archivist has the authority to "establish standards for the selective retention of records...." [44 USC Ch. 29, see 2905(a)], the full extent of his authority is not clear under existing statutes.

2. Was lack of publication of scholarly works the only reason you were denied tenure at Kenyon College? Were there other factors?

I cannot speak for those who made this decision. I did not see nor have access to the file that contained the material, pro or con, on my position at Kenyon. In the late 1970s tenure decisions were among the most difficult problems for all colleges, especially small, liberal arts institutions. I do know that the current and then president of Kenyon, Philip Jordan, has spoken to members of the Committee in strong support of my nomination.

I must add that, in leaving Kenyon, I immediately became a scholar and fellow in the first class of academics invited to the National Humanities Center, I taught as a visiting associate professor at Duke, and I was last year invited to come back to Kenyon to give a lecture to the college on liberal education. It was pointed out to me that no one on campus could name another person denied tenure who was subsequently accorded such an honor. (The text of this talk is in the large binder of writings I gave to the committee.)

I have also kept in my desk a letter that appeared in the campus newspaper the summer I left signed by nearly one-third of Kenyon's professors and administrators. It has meant much to me and I will share it with you.

Attachment

The Kenyon Collegian

Volume CV, Number 25

Kenyon College, Gambier, Ohio 43022

Established 1856

Thursday, April 27, 1978

Agresto will be missed

To the Editor:

Our esteemed colleague, Professor John Agresto, will leave us this August. Professor Agresto's excellence in teaching and scholarship has been equalled only by the concern he has shown for students, faculty, and the College itself. Decency, honesty, integrity, and warmth are his hallmarks.

We write this letter as an act of respect for a teacher whose dedication we admire, and who leaving we regret. To John and Cathy Agresto and their children we wish a long and successful life.

We will miss them.

Roy Wortman
Peter Rutkoff
Donald Rogan
William B. Scott
Michael Evans
Reed Browning
William Shapiro
P. D. Church
Edward Harvey
Peter Seymour
Charles A. Piano
Alan Batchelder
Kenneth Taylor
Sharon Dwyer
Eugene J. Dwyer
Sue Givens
Frederick Turner
Richard Kipp
Thomas Turgeon
Rita Kipp
Daniel Parr
William McCulloh
Howard L. Sacks
Robert Cantwell
Gerald Duff
Sene Austin
William Klein
Charles Rice
John L. Williams
Richard B. Hoppe
Owen York
John Elliot
Thomas J. Edwards

3. **You stated at the August 13 hearing that you had written three books. Is that correct? What were the titles of those books?**

Yes, I have written and edited three books. I authored The Supreme Court and Constitutional Democracy which was published by Cornell University Press in 1984. Liberty and Equality Under the Constitution was edited by me and published in 1983. The Humanist as Citizen: Essays on the Uses of the Humanities was co-edited by me and published in 1981. I contributed to these latter two books as well as edited the numerous submissions.

4. **You stated at the August 13 hearing that you had "been an administrator, both in the private sector and the public sector, or major educational and cultural organizations and institutions." What was your position at the National Humanities Center? How many people did you supervise?**

While the bulk of my administrative experience has been gained while serving as Acting Chairman, Deputy Chairman, and Assistant Chairman at the National Endowment for the Humanities over the past 4-plus years, I credit my success at the Endowment with the administrative skills I sharpened at the National Humanities Center. From 1979 to 1982 I was first Special Projects Officer then Assistant Director for Programs at the Center. In that position I served as coordinator of special events, conferences and numerous seminars, and I was in charge of directing the activities of the Fellows (approximately 40 each year) in seminars that ranged from 5 to 10 Fellows in each, and the administrative support staff. In addition to my duties for the Fellows Program, I assisted in the management of the Center which employed 20 to 25 persons. (From 1978 to 1979, I was a Fellow at the Center.)

5. In your earlier testimony, you said "I spent two decades teaching, writing, talking about the founding documents and the history of this country."

Your resume indicates 6 years of teaching at Kenyon College in Ohio, 1 year in Toronto, and 3 at the National Humanities Center in North Carolina. Where do you account for the other 10 years of teaching and scholarship?

My career in teaching began as a graduate fellow at Cornell University in 1967 when I taught American Government. In subsequent years I also taught classes in political philosophy and comparative government as well. This is all prior to my experience at Toronto, Kenyon, and Duke University. I include in my 20 years of "teaching, writing, and talking about the founding documents and the history of this country" my work at the National Humanities Center (see my answer to question 4) and my four-plus years at the National Endowment for the Humanities, where I have helped plan, implement, evaluate, and lead the Bicentennial initiative. In addition to all my writings on the humanities, I have spoken and written extensively about American history in conjunction with this Bicentennial initiative.

My most recent talk on the American Founding was published by Dickinson College, a copy of which is attached.

Attachment

DICKINSON

MAY 1986 MAGAZINE

The Constitution and the Declaration of Independence: the two documents support and complement each other

John Agresto

Three blocks from where I work there is a building, owned by the people of this country, that has in it a shrine. At this shrine there is what looks to all the world like an altar. On the altar, at the place where one expects to see a tabernacle or a cross, are the Declaration of Independence and the Constitution.

The texts are old and very faded, but Americans have for almost 200 years put these two documents together in their minds, conjoining them for national veneration. Scholars are taught to make distinctions, so they do. But America at large has never had any trouble seeing both these great texts as complementary aspects of the real meaning of America.

Nevertheless, except for one brief period in the 19th century, when those who tried to defend slavery were forced to attack the Declaration of Independence, whenever the two documents are spoken of separately, it's usually the Constitution that gets slighted. The Declaration of Independence, like Lincoln's Gettysburg Address or his Second Inaugural, has magically poetic phrases—"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness." Compared to such words, the Constitution, even with the Bill of Rights, seems to be no match.

Compared to the Declaration's revolutionary fervor, the Constitution seems dry and ever-so-legal. The Declaration speaks of liberty, of equality, of justice, of inalienable rights—the Constitution speaks of institutions, and offices, and mechanisms. Moreover, the Declaration, with its statement that all governments derive their just powers from the consent of the governed, seems so much more naturally democratic than the Constitution, with its electoral college scheme, six-year terms for senators, and unelected judges. Besides, the Declaration was an attack on the established order, but the Constitution turns that around and establishes a new order. And, perhaps above all, the Declaration speaks in grand terms about how we Americans are "one people," how, despite whatever differences we know we had internally, or with loyalist Tories in our midst, this Declaration disregards all that and calls itself "unanimous"—"the unanimous Declaration of the 13 United States of America."

In contrast to this native faith in the goodness and solidarity of us all together, the Constitution breaks us down—breaks us down into electoral units; it treats us essentially as individuals, each of us with our own private interests, rather than common unity it pushes checks, balances, separate institutions, jealousy, oversight. And even though the Constitution talks about "We the people of the United States," it seems to direct its energies more to establishing a balanced political order than fostering a community of fellow citizens.

So the poor Constitution, whose birthday we will soon celebrate, when we compare it to the Declaration, always seems to be the ugly duckling of the two—conservative where the Declaration is progressive, circumspect where the Declaration is bold, and stodgy, ever so stodgy. Even recently, when the Attorney General had the temerity to suggest that it would be a good idea for lawyers and judges, in their reflections on the meaning of the Constitution, to consider what the founders might have intended by the words they wrote, he was rebuked by two justices of the U.S. Supreme Court. One justice even went so far as to caricature some of the founders as "apostles of intolerance," and thereby, in one deft move, cast doubt on the authority of the very document that confers authority on him.

So, maybe we should be more modest in speaking about our Constitution, and reserve most of our praise for the Declaration? No, I think that would be seriously wrong. For even if the Declaration made us one people, free and independent, it's been the Constitution that has kept us that way. To say this means to say that Abraham Lincoln was absolutely right—that the really important question may not be Can liberty be established?, but Can it endure?

Americans are forever optimistic. Of course liberty can, and will, endure. It works here, and we approve of it, and it can work elsewhere. We are always upset by the fact that not all nations are free, that so many are ruled by tyrants, dictators, a ruling class, or a party pretending to govern in the name of the people. We actively hope for the success of free democratic institutions everywhere. But the facts are stark. Of the 166 generally recognized nations in this world, 160 have constitutions, but only 14 date from before World War II. Ours was the first of the modern constitutions, and it is by far the longest lasting. We have the only constitution that survives from the 18th century.

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[illegible]

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[illegible]

[illegible]

declared by a Congress that represented small Rhode Island and Delaware as equal to New York and Pennsylvania. The people of America never voted to adopt the text of the Declaration. In fact, as anyone who reads the Declaration soon sees, the words "democratic government" never once appear in the document.

It is not that the Declaration is indifferent to such matters. It says that justice demands that all governments be founded on the consent of the governed, and it says that the right of representation is "inestimable" to a free people. But it does not condemn George III for being king; it condemns him, rather, for being a tyrannical king. The Declaration at least leaves the door open this much—if a simple and thoroughgoing democracy can secure our rights to life, liberty, and the pursuit of happiness, then that form of government is fine. If a more restrained democracy—one, let us say, with permanent judges, or with indirect elections, or with a more cumbersome legislative process, also succeeds in protecting your rights—that way is fine too. If it is better at protecting your rights, so long as we are content with it, then such a restrained democracy is better.

Now there is no doubt in my mind that the critics of the Constitution are right on one thing—that the constitution gives us a more restrained democratic system than we find growing up in most of the states after the Revolution. For example, in Pennsylvania there were not two houses of state legislature but only one. The governor was weak and the courts relatively powerless. Anything a majority of the people wanted done through their one-house legislature would quickly be done. When Thomas Paine argued that the simplest, least complicated governments were the most democratic, he surely had a government like Pennsylvania's in mind.

But our task is not to see if the Constitution comports with the interpretation of democracy in each of the states after the Revolution—it does not—but if it comports with the words and ideas of the Declaration. And that, I think, it does. And when the people of Pennsylvania had the chance to vote the new U.S. Constitution up or down, they democratically voted it up. And later they even took their very democratic state constitution and moderated it to look more like the U.S. Constitution. All of that is democratic enough for the principle of consent enumerated in the Declaration.

I do not think we have to apologize for the brand of democracy the founders gave us in the Constitution. If all we are interested in is the immediate sense of the people turned into law, then the Constitution will disappoint us. But if we are more interested in what both Madison and Hamilton called "the deliberate sense of the community"—the democratic will restrained for a while and given the chance to think itself through—then there is nothing suspect about the Constitution's way of doing things at all.

But are we less free under this Constitution than the Declaration wanted us to be? I think not. To make that argument one would have to proceed this way. The Declaration breaks down the bonds of old government. It proclaims liberty by casting off the hard yoke of a strong centralized power. Thanks to the success of the Revolution, the states then come along and establish modest governments and no real centralized power. Political power is the enemy of liberty. But the Constitution comes along and establishes a strong government—about as strong as the government of Great Britain—and it establishes this government centrally.

If power is the opposite of liberty, then the Constitution, with its powerful central government, is now the new enemy of all liberty. Jefferson himself, we know, was not opposed to this view. He wrote to Madison, not long after the Constitutional Convention met, that he considered himself unfriendly to energetic governments—they always, he said, are the foes of liberty.

But Madison, his friend, offers him and us a slightly different perspective. Yes, truly powerful government, all-powerful governments, are always a danger to liberty. But the greatest dangers come from those powerful governments that are first, nondemocratic, or second, purely democratic. If you set up a restrained democracy—one based on separation of powers, checks and balances, bicameralism, staggered terms of office, different modes of elections and so on, you can give such a government greater power because it cannot act precipitously. It cannot act without some deliberation, some compromise.

Then Madison turns the tables even further. It is in the states that grew up right after the Declaration where liberty was always at risk. In those states no one wants to be in the minority—you run the risk of losing all. And besides, Madison gently tells Jefferson, liberty is endangered by too little government to protect you as well as by too much.

All of you know this to be true. If you dread walking downtown tonight because you do not know if there's enough government, police, to protect you from assault or robbery, you are not particularly free. So Madison, in his ever-so-polite way, helps Jefferson to see that, when it comes to liberty, the Constitution may well be our best security. And even Jefferson was forced to admit that the state constitutions, written so soon after the Declaration, were put together at a time when we were "new and inexperienced" in the science of democratic government.

So we've covered the two old-time objections to the Constitution—it's not as democratic as the Declaration and it's not as progressive, freedom promoting, as the Declaration. But those are insupportable objections. But there is one last objection before I can say I am done: Maybe under this Constitution we're not as good as we were supposed to be. The Declaration assumes that we are, and can continue to be, one united community of people. A union of public-spirited citizens, of soldiers at Valley Forge, of statesmen who would not hesitate to pledge to and for their fellow citizens "their lives, their fortunes, and their sacred honor."

Instead, what does this Constitution give us? Institutionalized pluralism and a heterogeneity of interests, so we are told. A celebration of every group, every man, every woman out for itself, himself, herself. In place of farms we soon see factories. In place of stern, binding religion, the Constitution forbids any religious test for office. In place of cultivating character we've set up a cosmopolitan nation more interested in liberating our passions than restraining them. We set up a government that protects commerce but not virtue.

So, where the Greeks had moral and martial greatness and the Romans had honor and stoic virtue, America became, under this Constitution, a nation of shopkeepers. This Constitution, again the critics say, gave us a way of life that has bound us to a culture of narcissism, to self-interest, to self-regard and the satisfaction of vulgar passions. Why do the nations of the world respect our Declaration of Independence and not our Constitution? Because, this critique goes, they believe in the great principles of equality and liberty, but not in the shallow way the Constitution has fashioned Americans as citizens.

Some of this is true. The Constitution did attempt to reach the common good indirectly rather than directly. In theory, if we only read *The Federalist Papers*, America does seem to be a nation more concerned with private loves than public participation, more concerned with money making than honor, more concerned with easy toleration than the narrow road to heaven.

But at some point we have to ask the obvious question: Why is America, seemingly so well-founded in the everyday, the personal, the mundane, and the selfish, also the most magnanimous and generous nation on earth? Why, despite the individualism ushered in by the Constitution, are we also so highly cohesive, public, and patriotic as a people? If the Constitution is so low, why is America so decent?

I can only sketch out for you a possible answer. Perhaps, as Madison himself said, despite the "degree of depravity in mankind which requires a certain degree of circumspection and distrust," there are also "other qualities in human nature which justify a certain portion of esteem and confidence." Perhaps liberty, as I think Madison guessed, would let these better angels of our nature come forward.

But I also think the largest reason for our decent national character is not to be first found in our nature, but rather in the Constitution itself. "The best republics," John Adams once observed, "will be virtuous . . . but we may hazard a conjecture that the virtues have been the effect of the well-ordered constitution rather than the cause."

As Alexis de Tocqueville once noted, the tendency is for self-interest, in a well-ordered nation, to become enlightened self-interest, then to become indistinguishable from virtue itself. What we might originally have done for our neighbors from hope of gain, often becomes an invitation to repeated good acts, and we become habituated into virtue even when we thought we were thinking only of ourselves.

The most amazing thing about our Constitution is not that it separated our liberty from our virtue but that it showed how liberty and virtue were compatible.

Summarizing: The Declaration of Independence and the Constitution lean on each other and complement each other. If the Declaration proclaimed for us the rights of man, the Constitution helped make those rights real and solid and permanent. The Constitution gives us a kind of democracy the Declaration would applaud. This Constitution provided the hope that a free people and a good people can be the same people. That seems to be cause enough for us to begin our bicentennial celebrations. ☐

6. How many copies of The Supreme Court and Constitutional Democracy have been sold and who uses your book?

I am told that the book has sold 2,241 copies by latest count. It continues to sell well and is in its second printing. My publisher informs me that the following universities and colleges have purchased the book for classroom use:

Princeton University
The University of Virginia
Middlebury College
The University of Maryland
Maryland State University
Kenyon College
The University of California, Berkeley
The University of Calgary (Canada)
The University of Houston
Vermont College
California State University
The University of Arkansas
Western Kentucky University
Oglethorpe University
New York University
Boston University
The University of Tennessee
Colorado College
Washington College
Azusa-Pacific College
The University of Southern California
Luther College
Temple University
The State University of New York
  (SUNY) Albany and Oswego
Claremont College
Carleton College
The University of Delaware

7. You say you consider yourself a scholar of "the American collection" at the Archives. What is "the American collection" and what does it encompass?

The "American collection" was my shorthand for all documents from the founding period of the Republic. Although the Constitution is anchored in time, the "founding period" is generally understood to include a number of years prior to and following ratification.

8. Describe your views of the role of the U.S. Senate in reviewing your nomination for Archivist of the United States. Should your professional qualifications be a legitimate subject of inquiry? Should your past record as an administrator be a legitimate subject of inquiry? What subjects should not be legitimate subjects of inquiry by this Committee?

The Senate is itself the final judge of what inquiries it may pose to a nominee. I do not, therefore, believe that it is possible for a Senator to pose an "illegitimate" question.

There are, however, in my view, such things as inappropriate answers that a nominee could give. If, for example, the nominee to a position on the federal bench were asked how he or she would approach an issue that could come before him on the bench, it would not be an "illegitimate" question. It would, in my view, be an inappropriate response for that nominee to pledge himself to a particular outcome.

I have not been asked any illegitimate questions either in pre-hearing questions, questions posed during my hearings, or questions posed to me following the conclusion of the hearings. I have tried my best to avoid inappropriate answers, that is, those responses that would reveal a closed mind on a question which the Archivist will be called upon to act as a fair-minded judge.

9. **Have you ever visited or used the Archives for research? Cite results of your research.**

   Have you ever visited or used for research a Presidential library? Elaborate.

Yes, I have visited the Archives for research. Recently I went there not only to obtain printed copies of the original drafts of the Bill of Rights as proposed by the First Congress -- both House and Senate -- but also to examine the original papers and notes taken in the course of the debate. I intend to use some of my research there for an article on the Founding I am writing for the Smithsonian magazine. Furthermore, almost everything I have written on American historical issues, whether on Lincoln, or the Founding, or the courts, draws heavily and extensively on documentary material.

A few years ago I visited the Johnson Presidential Library in Texas, although not for any particular research purpose. My field of scholarly expertise is more in the areas of American constitutional law and political history and thought of the 17th and 18th centuries.

10. **Do you believe there are any shortcomings in your background to fulfill the responsibilities of Archivist of the United States?**

A nominee to any position who stated he had nothing to learn would advertise himself as blind to new developments affecting his or her responsibilities. At NARA, for example, problems posed by new technology are every day becoming more apparent.

In this area of problems arising as the result of technology's advance, for example, is the challenge posed by electronic records. Few, if any, people can speak with authority on the myriad questions posed by an ever-expanding array of information systems. I certainly cannot. This is an area where I will be required to study new developments on a continual basis as every day can be expected to present new challenges. It is also a field that I feel would benefit from close Congressional study.

Even in areas I believe myself extremely well-qualified, I will continue to study new developments. I have been deeply involved in the preservation activities at NEH since I arrived here in 1982. Such programs as the U.S. Newspapers Project have taught me the crucial necessity of addressing the problem of deterioration of the nation's paper legacy. But though I am well briefed in this area, I have much more to learn, and look forward to an ongoing effort to stay abreast of developments and innovations in approach.

11. **Are you a member of the Society of American Archivists?**

No.

12. **What have you written in the area of public access to the records of our government?**

I have not written any books or articles devoted exclusively to this topic. The vast bulk of my work is in the field of my specialty, American political theory and the Constitution.

Nonetheless, there are essays written in other areas that touch both directly and indirectly on the question of public access. I would particularly direct your attention to a speech I recently gave entitled "Preserving Our Heritage," which was last week printed in National Preservation News, a publication of the Library of Congress. (A copy was attached to the Follow-Up Questions submitted on September 22, 1986.) Moreover, I have stated my views on public access in my written testimony before the Committee, in my pre-hearing questions submitted to the committee, and in my statement on the Nixon Papers.

13. Have you ever met with representatives of the organizations representing the principal archives user groups? Which ones? When did you meet?

I have met or offered to meet with a number of such groups. Most recently I addressed the New York State preservation community in Albany on May 15, 1986. In early summer, at the request of the National Association of Government and Records Administrators (NAGARA), I scheduled a meeting here in Washington, but NAGARA cancelled that meeting without explanation. I have spoken as well with individual genealogists such as Thomas Kemp, who testified on my behalf as a result of what he learned about me in our conversation. (Mr. Kemp was accompanied in his visit by about a dozen other genealogists.) Of course, I have delivered dozens of speeches over the past four years to scholarly groups such as the ACLS, the Washington Philosophy Club's Annual Colloquium, Howard University, the National Humanities Alliance Annual Colloquium, Brookings Institution, and others. I assume that a good percentage of my audience were members and often representatives of "principal archives user groups."

Meetings with user groups that came about as a result of my nomination centered on many topics. Some were concerned with the charge of partisanship levelled by opponents of my confirmation, and with the fear of possible politicization at the Archives. I explained a number of things to them. I pointed out that Senator Paul Simon knew me quite well and was confident enough of my non-partisan qualifications that he would introduce me to the Senate. I pointed to four-plus years of work with a 26-member bipartisan National Council which oversees NEH and which has never had less than one-third President Carter appointees until very recently, and noted for them the fact that this Council had unanimously passed a recommendation praising my more than 15 months as Acting Chairman. I also pointed out that allegations concerning partisanship -- concerning meddling in the grants process -- had been made to the Senate, and that the Committee in response had sent two GAO investigators to NEH, investigators who waded knee-deep through file after file, and who, in their final interview with me, thanked me for my cooperation and stated that they had not found anything that indicated politicization. I added that this result did not surprise me, because NEH prides itself on its non-partisan professionalism.

Those who came to see me, like Tom Kemp, stated their confusion at the rush to judgment their organizations had exhibited in deciding to oppose my nomination. I could not speak to why people who have never met me were so eager to oppose me.

As noted above, I met, totally informally, with a number of archivists in Albany when I gave the talk on "Preserving Our Heritage." We spoke about the needs of archivists, especially state and local archivists, and the need for the National Archives to continue in a leadership role for all archives; about the Bicentennial; and about the importance of preservation and the need to make more people aware of the problem of material deterioration.

On June 17, 1986, I met with Robert Morris, Martha Slotten, and Thomas Conners from MARAC and discussed my firm belief in open access of governmental and presidential documents, about my position on affirmative action and all that we had done to have people generally underrepresented learn more about openings and opportunities at the NEH, about documentary editing, and about NHPRC.

Finally, I talked about NEH with many of the groups and individuals who met with me. Even when Calvin Jefferson, President of the AFGE local at NARA, came to discuss NARA with me, we talked a great deal about NEH. Mr. Jefferson wanted to investigate NEH's record in matters concerning the treatment of employees generally at NEH, and specifically, the treatment of minority employees. As I did with the

GAO investigators, I gave him the run of the place and encouraged him to talk with anyone he cared to. He took advantage of this and, after discussions with people on the staff here and after reviewing our advancement programs, came back with a changed mind. He discovered what I have been saying for many years. At NEH there are higher percentages of minorities in good jobs than at most government agencies. At NEH there is effective recruitment targeted at minorities through aggressive use of advertising in publications that circulate in minority communities, and there exist "bridge" positions to assist employees in expanding their career opportunities. I explained these circumstances to many people, but Mr. Jefferson, who has wide experience in employee relations, was most impressed because he realized the care and time that went into building NEH's record and reputation. He was so impressed that he asked AFGE to withdraw its opposition to my nomination, which it did.

I firmly believe that had other groups of user representatives come to meet with me, indeed, if NAGARA had kept its appointment with me, many of those groups would also have left those conversations with changed minds. However, if confirmed, I look forward to working with every group that cares about NARA, and earning their confidence and cooperation.

14. **What federal regulations, policy directives, and management directives do you believe do not have the force of law?**

Are there any with which you believe, as Archivist, you may have to disagree and refuse to comply?

Do you foresee any situations where you feel you would have to resign as Archivist in order to comply with your conscience?

My past disagreement with the binding force of the EEOC's Management Directive 707A is well known. That disagreement ended with the passage of the National Endowment for the Humanities Reauthorization Act in December 1985. I consider this act to convey the intent of Congress on the subject of MD-707A's authority, and infused MD-707A with the force of law with regard to NEH. I have stated that I will comply with MD-707A at the archives if confirmed. I know of no federal regulations, policy directives, or management directives with which I have any disagreements similar to the one which I had with MD-707A; and I do not foresee any circumstances requiring my resignation as a matter of conscience.

15. **Do you believe NASA regulations have the force of law?**

Do you believe Management Directives of the Equal Employment Opportunity Commission have the force of law?

If you were in doubt, to whom would you turn for legal advice on this matter?

Do you believe that it is appropriate for individual executive branch agencies, after consultation with the Justice Department, to decline to comply with regulations, policy directives, and management directives, absent a court decision ruling on the lawfulness of them?

Why or why not?

I do believe NASA regulations to have the force of law. The only management directive which I believed to be ambiguous in its authority was MD-707A. This ambiguity, as stated in my answer to question 14, has been resolved. There is no other regulation -- at NASA or elsewhere -- or management directive -- at EEOC or elsewhere -- that I know of that presents the same complicated issue as MD-707A did. Should such a regulation or management directive be brought to my attention in the future -- I know of none currently -- I will seek the advice and recommendation of the General Counsel at NASA as I did at the National Endowment for the Humanities with regard to MD-707A.

When confronted with ambiguous authorities and important issues, I believe it is appropriate for an agency to use the best legal authority at its disposal to search for the best answer to an issue that the law can provide and to conduct that search in the open and before the often critical eyes of the public and Congress. Court decisions of course provide the best answers, but are not always available. I also believe that it is settled law that an agency must follow its own regulations. If those regulations conflict with other regulations promulgated by a different agency, the ultimate resolution rests with either Congress or the courts. Until such a resolution is forthcoming, an agency should follow its own regulations.

16. Do you regard the measurement of underrepresentation of minorities in job types a legitimate measure of the past effects of racial discrimination?

If such measurement shows underrepresentation of minorities in top jobs and overrepresentation of minorities in bottom-rung jobs, what remedies do you believe are appropriate?

It is my understanding that the courts view such underrepresentation measurements as evidence -- though not necessarily conclusive evidence -- of past discrimination in some instances. Aside from the precise legal status of such evidence, underrepresentation of minorities ought to serve as an alarm bell signaling the need to pursue aggressive recruitment policies to ensure equal opportunity in any employment setting. We did just that at the NEH with great success. Our success was such that upon inspection of personnel practices at NEH, NARA's president of the local chapter of the American Federation of Government Employees changed his view on my nomination, and AFGE's opposition to me was withdrawn. One reason he did this speaks to the second part of this question. At NEH we have tried very hard to fashion "bridge" positions to assist employees in lower level jobs to move to higher level jobs. In addition, we have initiated the use of advertising in periodicals targeted towards minority audiences in order to publicize vacancies at NEH within minority communities. Moreover, we advertise openings for professional positions at all Historically Black Colleges and Universities. I believe similar steps would be appropriate at NARA.

17. Do you believe the Constitution is a colorblind document?

Do you intend to submit annual goals and timetables to the EEOC as Archivist for hiring and promotion of minorities, handicapped, and women at the National Archives?

Do you intend to expand employment oportunities for minorities currently employed at the National Archives? Describe.

The Constitution at the time of the founding was not a colorblind document, a flaw that produced civil war and the near death of the Union. Today it is impossible to answer the question as the Supreme Court struggles with the issue almost every term. The Court's current answer seems to be that in some circumstances the Constitution is and must be "colorblind," but that in other circumstances, it is not. My own view is that distinctions based on race should be subject to the most rigorous and careful strict scrutiny. This puts me close to the position of believing in colorblindness as a constitutional principle. It is, of course, the responsibility of the Supreme Court to continue to address the question and the responsibility of all Americans to abide by the courts resolution of this difficult issue.

As I stated at my hearings, I will submit goals and timetables. I am also firmly committed to expanding opportunities for minorities at NARA. We did it at NEH through a number of ways, including recruitment and the use of bridge positions. I am certain it can be done at NARA. I am proud of our record at NEH. I fully expect to lead NARA towards a similar exemplary record.

18. Do you find it morally offensive for the federal government to ask one's race, gender, and age on Census forms? Employment applications?

Do you find it morally offensive for the National Park Service to provide senior citizen discounts on access fees to our national parks? (Golden Age Passports)

Do you find it morally offensive for the federal government to provide special language classes (English as a second language) for children of recent immigrants to this country?

Do you find "veterans preference" in federal government hiring morally repugnant?

Special education classes for slow learners?

Ramps and walkways to public buildings for those confined to wheelchairs or otherwise requiring walking assistance?

Braille lettering and numbering in buildings and elevators for the blind?

Closed-captioned television for the hearing impaired?

Distinguish your position on affirmative action goals and timetables from your answers to each of the foregoing questions.

I find none of these special programs morally offensive. I have always objected to race- and gender-based goals and timetables partly because they may act to penalize individuals innocent of any wrongdoing. Special efforts on behalf of the handicapped assist particularly-burdened individuals. The Golden Age Pass is available to any individual who reaches a particular age. Pure information collections on census or employment forms have no effect on individuals whatsoever. But employment preferences given to groups may harm innocent individuals. The Court has found this to be especially true in the area of layoffs and firings, but less true in the initial stages of development. A society is on the best course when it respects and judges an individual on an individual -- not group -- basis. This is, no doubt, what led Justice Jackson to observe that distinctions based on race "are odious to a free people" -- a statement he surely would not have made about distinctions based on age or handicap or language barrier. For similar reasons the Court has always given strict scrutiny to race-based programs, but not to age or handicap or economic programs.

19. What if the Archivist encounters resistance or refusal to gain access to another federal agency's records for the purpose of appraising and scheduling such records?

Should the Archivist insist on such access, and, if so, to whom would you, as Archivist, turn for legal guidance and court representation?

I do not anticipate many problems that cannot be solved by discussion and persuasion. Should such a problem arise that required legal advice, I would rely upon the legal staff at the Archives. Court representation, if ever necessary, would be furnished by the Department of Justice. The Archivist should insist on the access necessary to the discharge of his or her statutory responsibilities.

As debate over the Archives independence bill in the Senate made clear, the Archivist should seek the assistance of the Attorney General whenever appropriate:

> "The security of records was of great concern to the conferees. There have been a number of incidents of removal or destruction of records by public officials in recent years. The anomaly of present law is that an agency head has a duty to initiate action to recover records which he himself may have removed. The conferees, therefore, have clarified the statute to authorize the Archivist to ask the Attorney General to initiate action to recover such documents, if the agency head does not do so within a reasonable time."

20. Should NARA have its own litigating authority?

No.

21. If I understand your position on the Nixon Presidential Materials correctly, you would not feel bound by the opinion of the Department of Justice Office of Legal Counsel. If former President Nixon invoked a claim of executive privilege over his Presidential materials proposed to be made public by you as Archivist, absent a claim of executive privilege by the incumbent, would you honor the claim by the former President?

You stated the Archivist should go no further if the incumbent President makes a former President's claim of privilege his own.

What do you mean by this? Explain how you see this public access and privilege claim process working.

The issue of claims of executive privilege by former President Nixon is before the United States District Court for the District of Columbia. I will of course abide by the decision of the courts in this case. Should a claim of privilege by former President Nixon arrive at the Archives before the court has rendered its decision, it will be handled in the manner detailed in the regulations which are now in operation at NARA. Those regulations provide that I will be part of a decision-making process on the validity of the claim. The regulations do not envision the Archivist or any other participant in the process entering into the process with a closed mind. Rather, the regulations expect full and fair consideration of every privilege claim. I believe that a premature announcement of a disposition one way or another would completely undermine the integrity of the process and quite likely open the regulations to new legal attack. This means that the Archivist should weigh the merits of each claim and not enter the deliberations with a disposition either to honor all claims or reject all claims. Each assertion of a claim of privilege must be judged on the merits, as the regulations indicate.

This concern does not prevent me from stating a view on the appropriate response of the Archivist to the assertion of executive privilege by an incumbent President. The regulations do not speak to this issue. If an incumbent President asserts a claim of privilege over an executive document in the Archives, the Archivist should respect that claim, and the document should not be made available to the public until the President indicates that he has ended his claim of executive privilege or until the courts order the release of the document.

22. Describe the characteristics a record would need to have in order for an incumbent president to exercise an executive privilege claim.

The Archivist, or a nominee for that position, cannot in my view speak with any final authority on this question. Executive privilege is a privilege reserved to the President, and, I think the Archivist would do harm to the Archives were he or she to express an opinion directing an incumbent president on the appropriate exercise of this privilege.

23. In view of the positions taken by the Congress and the Supreme Court over the years on the Nixon Presidential Materials, how would you be inclined to treat the substance of any claim of executive privilege made by Mr. Nixon?

Would you feel compelled to consult with the incumbent President's staff and/or the Department of Justice in deciding such a claim?

I would not feel compelled to consult with anyone outside of NARA. While I am aware of Congress' concern that access to the Nixon papers be opened to public access as soon as possible, I do not feel it would be appropriate for me -- for reasons stated in my answer to question 21 -- to comment on "inclinations" regarding the substance of executive privilege claims by the former President before the Archives has had the chance to review the claims. Each and every claim must be judged on its own merit.

24. Have you had any conversations with anyone (in or outside the Administration) on public access to the Nixon Presidential Materials and/or your position on this issue?

Please provide names of such persons and date(s) of contact.

While I have been willing to furnish my statement on the Nixon Papers regulations to anyone who has asked for it, I developed that position on my own and consulted on it only with Mr. Hugh Hewitt, then General Counsel of the National Endowment for the Humanities. During the summer, I had numerous conversations with Mr. Hewitt on matters relating to my nomination, many of them the result of the fact that Dr. Cheney designated him as the contact person to coordinate GAO access to all NEH personnel and papers when the Committee ordered GAO to investigate numerous allegations concerning my record at NEH. This investigation continued for many weeks, and while it did not result in any evidence of other than professional and competent administration at NEH, it did require Mr. Hewitt to direct numerous questions to me and to meet with me on many occasions. I saw him many times, nearly every day, this summer. I sought advice from him on the Nixon Papers on perhaps six occasions when I was studying the issue, but I could not be certain on what dates those conversations occurred.

I have had no substantive conversations on the Nixon Papers with anyone else, though many, many people have asked me about them, including members of the press. Among people with whom I have held such non-deliberative conversations are Mr. Tom Mann of the APSA, Mr. Stanley Kutler of the Department of History at the University of Wisconsin, Mr. William Schambra of AEI and a member of the NHPRC board, Robert Morris, Martha Slotten and Thomas Conners of MARAC, and Mr. Thomas Kemp. In addition, two reporters approached me on separate occasions after the hearings for comment about my stand on the Nixon Papers. In each instance I directed them to the statement I had made before the Committee. Thus, I arrived at my position on the Nixon Papers on my own, and, after stating my view to the Committee, I have directed all inquiries to my written statement.

My only contact with the Department of Justice regarding the Nixon Papers was to send a copy of my statement to their Office of Public Affairs at the request of that office after I had presented the statement to the Committee at my first hearing.

Nancy Kennedy of the White House Legislative Affairs Office did attend courtesy calls I made on members of the Committee during which the Nixon Papers were discussed. Ms. Kennedy has never attempted to provide me with advice on this issue.

My position was independently arrived at on the basis of a close study of the regulations, the OLC opinion, the GAO opinion on the OLC opinion, and the record of hearings on the subject before the House. If I am confirmed, I will eagerly await the decision of the District Court on this question.

25. **Do you believe the current annual level of grants available through NARA is sufficient to meet the goals you have identified?**

If not, what sources of funds do you propose to augment the current level?

Yes, although I will surely need to work directly with the grant-making process at NARA to be more comprehensive in my answer. I must add that I succeeded in implementing innovations in grant making at NEH that stretched available dollars. The increase in private-sector participation in NEH-sponsored projects has increased quite dramatically in recent years through aggressive use of "matching" awards. It may well be possible to use some of the same techniques successfully at NARA. Indeed, I would hope to discuss with the legal staff at NARA and with the Congress the possibility of setting up an endowment of private support to help carry out better the mission of the Archives.

24. Are there any special programs you plan to inaugurate for the Bicentennial of the Constitution?

I am aware of a number of projects that the Archives has already planned for the Bicentennial celebration and they all seem to be worthy projects. I have not yet formulated any specific proposal since I would only want to do this in collaboration with the staff at NARA, but I did mention in my testimony a number of general directions that I would like to explore further, including using the Archives as a locus of classes on the Constitution for more high school and college students, holding an increased number of lectures and seminars at the Archives, and the possibility of presenting even greater educational opportunities for the general public in the area of the foundations of American society. I note with pleasure that NEH has recently supported a grant for a lecture series on the Constitution featuring such eminent scholars as Robert Rutland, Charles Hobson and Gerald Gunther, and that all the lectures will be held at the Archives. Of course, the Archives should continue to work closely with the Commission on the Bicentennial of the U.S. Constitution to coordinate the celebration of this great document.

27. What level of staff and budget resources do you believe are needed to address the problems you have identified as most pressing for the National Archives?

In your answers to our pre-hearing questions, you stated your intention to allocate resources to the preservation of documents, to increase public awareness of those documents, and to increase dissemination of them, as well as speeding up the appraisal process. What sources of funds, other than the annual NARA budget, do you propose to tap to increase the financial resources available to NARA?

You have proposed that the Archives apply for NEH grants. Elaborate on this idea.

NARA's budget seems to me to be adequate at the moment, though I will not hesitate to seek more money in future years if higher levels of funding are required. Indeed, speaking from the perspective of an administrator at another federal agency, the Archives budget seems very lean.

Even with a steady level of funding, however, it has been my experience that productivity can always be improved, not the least of which is through effective leadership and efficient administration. I provided both at NEH and I believe I can do so at NARA. Increased productivity provided NEH with the budget margins that allowed innovation and steady, excellent performance. I am confident that I can build the same record at NARA.

I did not intend to suggest that NARA itself apply for NEH grants, though I may have misspoken. NEH policy reflects

Congressional intent, recorded in House and Senate reports, that NEH not provide grant money to organizations that are primarily dependent upon Congressional appropriations as a source of funds. NARA is in this category and would be ineligible for direct NEH funding as a result. I did speak of the excellent cooperation and common interest between NEH and NHPRC when discussing my background in NARA-related programs. I expect this community of interests will not only continue but be strengthened and expanded if I am confirmed. For example, I see no reason why applicants cannot apply to NEH for summer seminars or institutes on matters concerned with history or preservation, and for those seminars to be held at the Archives using the documentary and informational resources of NARA. This has, indeed, already occurred on a limited basis (see my answer to question # 26). If confirmed, I expect to continue and strengthen such cooperation.

28. Are there areas of the NARA budget which could be reduced or where efficiencies could be achieved?

I do not know of any places where budgets can be reduced. I sense that the Archives has functioned under a very lean budget. This is not to say, however, that no further efficiences are possible and I will do my best, if confirmed, to implement any conceivable efficiences and revise priorities and timetables.

As an administrator of a federal agency -- one of the best run agencies, I believe -- I never shut my eyes to the possibility of discovering new areas of efficiency or to finding budget outlays that, through a combination of management techniques, could be reduced without harm to productivity. Even little things count. As Acting Chairman at NEH, for example, I sponsored a "small suggestion" competition. I promised $25 to the author of the best suggestion, lunch to the runner-up, and a strawberry pie to the third best suggestor. This idea, aimed at producing tiny efficiencies, in fact sparked more suggestions in three weeks than we had received under the official awards program in the prior eight years. Two suggestions, resulting in savings in excess of $18,000, were referred to the official cash awards program. The others brought in savings from $10 to a few hundred dollars.

The point is that the attention to budget details by someone with federal budget experience can produce great efficiencies. Every area of NARA's budget may well be capable of yielding some savings. I believe this because every portion of the NEH budget provided sources of saving in the past. In many ways it has been instructive to have been a senior official at a major federal agency during "lean years." This experience has equipped me with the knowledge of where to look for savings, but also the wisdom to know when fruitless search for pennies may harm the integrity of a program.

As I have stated elsewhere, I will have no hesitation in asking for more money in areas where a convincing case can be made that it is necessary.

29. Must the Archivist abide by budget targets assigned to NARA by OMB?

May the Archivist seek higher funding levels from Congress than the budget marks assigned by OMB?

OMB is responsible for setting budget targets (planning levels). I have worked with OMB for five budget cycles now. It has been a good working relationship. I know how to communicate crucial needs to OMB. If the assigned planning levels are, in my judgment, inadequate to effectively carry out NARA's mission, I will not hesitate to appeal the planning level and make a strong case as to why more funds are needed. It is a delicate process, but one that can work in experienced hands.

I have represented a federal agency before Appropriations Panels in the House and Senate for the past two years as principal spokesman, and before that, as a high-level appointee. I have always been frank with the members of these committees. I will continue to be candid concerning my agency's needs if confirmed as Archivist.

30. Do you plan to recommend continued funding for grants by the National Historical Publications and Records Commission?

What distinction do you make between the types of documentary editing projects which NEH should fund and those NHPRC should fund?

NHPRC performs a valuable function and should be continued. I will argue the case to OMB that it ought to be maintained at least at current funding levels. I believe that I have great credibility with OMB officials and will be in a position to present this case persuasively.

In the area of documentary editing, the NEH supports projects that range over all the fields included in the humanities -- literary texts, philosophic works, historical writings, and so on. NHPRC has properly concentrated its efforts primarily in the area of the works of American historical figures. I see no problem with this overlap; indeed, I see benefits. These benefits may well increase as cooperation increases.

31. In view of the Administration's interest in promoting greater private sector involvement, what operations of the National Archives do you feel should be contracted out to the private sector?

Because the Archives does specialized work that requires skilled individuals, because the environment with which such work must be conducted is frequently carefully controlled, and because of the great need for confidentiality in many of its operations, I do not believe that NARA is a candidate for much in the way of "contracting-out," though I will remain open to suggestions in specific areas.

32. Do you believe users of the National Archives should pay user's fees?

If so, which users and what services?

Should any user groups be exempt from paying user's fees?

If so, for what services?

Should other government agencies be charged user fees?

I do not believe user fees are generally a good idea. As I said in response to my pre-hearing question on this matter, I think that user fees undermine the notion of open public access to the public's own documents and would inevitably discriminate against the less well off individual and institution. Often the cost of administering such fees would seem to offset the benefits. It would require an overwhelming demonstration of fiscal need for me to support user fees for the general public or for scholarly research.

In those instances where NARA might do the work of agencies that is not specifically the mission of NARA itself, it might be appropriate to charge fees for this work.

33. How many people have you hired at NEH? How many were minorities? How many were women?

1982 After 6/1/82
New Hires 47
Females 38 (80.8% of new hires)
Minority Males 1
Minority Females 18
Total Minority 19 (40.4% of new hires)

1983 New Hires 67
Females 50 (74.6% of new hires)
Minority Males 3
Minority Females 12
Total Minority 15 (22.3% of new hires)

1984 New Hires 62
Females 43 (69.3% of new hires)
Minority Males 9
Minority Females 22
Total Minority 31 (50% of new hires)

* 1985 New Hires 79
Females 64 (81% of new hires)
Minority Males 2
Minority Females 31
Total Minority 33 (41.8% of new hires)

* 1986
Prior to Lynne Cheney's appointment
New Hires 16
Females 13 (81.2% of new hires)
Minority Males 1
Minority Females 5
Total Minority 6 (37.5% of new hires)

After Lynne Cheney's appointment (5/23/86)
New Hires 29
Females 22 (75.9% of new hires)
Minority Males 3
Minority Females 6
Total Minority 9 (31% of new hires)

Total 1986
New Hires 45
Females 35 (77.7% of new hires)
Minority Males 4
Minority Females 11
Total Minority 15 (33% of new hires)

TOTAL 6/1/82 to 9/19/86
New Hires 300
Females 230 (76.7% of new hires)
Minority Males 19
Minority Females 94
Total Minority 113 (37.7% of new hires)

* These figures cover the time when Agresto was Acting Chairman.

34. Are you familiar with the NARA plan for the preservation and use of military records in the National Archives?

Comment on the plan's strengths and weaknesses.

Do you plan to implement this plan?

I have only recently received a copy of the plan and begun to study it. I will continue to do so. It appears to me to be a plan that resulted from thorough inquiry, careful consideration of relevant factors, and prolonged deliberation. Right now I see no reason why the plan should not be implemented. Indeed, I see it as a matter of high priority.

As the report makes clear, the number of documents involved is immense, and the condition of the records, especially from World War II, are often in exceedingly poor condition. Thus, the first step must be the physical preservation of the material at hand. This alone, NARA estimates, will take four years. All in all, the plan seems sensible and well thought through, and I intend to implement it.

35. Do you agree with the annual budget levels proposed in the NARA 20 year records preservation program?

I am aware of NARA's 20-year preservation plan. I have reviewed it, and it appears adequate. The problems involved in preservation have been growing for 200 years, so I recognize the magnitude of the task. As a planning tool, the annual budget levels proposed are extremely valuable. Of course, I realize that however persuasive it may be, NARA's budget is not developed in a vacuum. I will, however, recommend the plan to the attention of OMB and the Congress and promote it as year-to-year budgeting decisions are developed.

36. Describe the issues in dispute between the Archives and the FBI. What is your approach to a resolution of this matter?

I believe this question refers to the court case titled American Friends Service Committee vs. Webster. I have been briefed by NARA's legal staff on the extraordinarily complex issues connected to this case. The case was, in fact, dismissed only recently, September 9, 1986, by the District Court for the District of Columbia. The NARA legal staff continues to study the implications of this decision, and, until those implications become clear, it would be inappropriate for me to offer a detailed opinion on this case.

I am aware that this litigation has resulted in the definition of certain records as "restricted use records," a development that concerns NARA and, of course, concerns me. Generally speaking, I believe NARA needs unrestricted access to all records under its control in order to meet its obligations. I will make it an early priority to initiate or continue conversations with concerned law enforcement agencies, including the FBI, to the end of working out a comprehensive approach to NARA's handling of these records.

37. What exposure or training have you had with respect to handling electronic records?

What familiarity, exposure, and experience have you had with electronic information systems?

We at NEH have been involved quite extensively in the use of electronic recordkeeping. We operate a technologically advanced on-line computer system in order to meet the full range of records retention and analysis. One example is our automated grants system. Applications are carefully tracked from the date received through the entire grant process. This is extremely important since each grant may span several years and go through several reporting cycles. Indeed, portions of the system we have developed are so highly regarded that some have been adopted by other agencies.

I recognize, however, both the promise and the problems involved in these technological advances. One problem is that electronic systems now make it extraordinarily easy to erase records with just the push of a button. To give one example of the problem that the Archives faces in particular, scholars very often need to know not only what a final policy directive says, but the ingredients, the steps, the alternatives, that went into a final policy resolution. This pre-decisional material is part of the full record and should not be lost. We must be assured that agencies, including the operational personnel at agencies, know this and that they are fully aware of the problem that electronic records pose in the process of records management. This is further complicated by the fact that the Archives shares with other agencies, particularly GSA, authority over files and records. Nevertheless, I understand that NARA is working on regulations to ensure that the electronic data necessary for a full record are not inadvertently lost. Of course, as I stated in my answer to Question 10, this is an area and a problem that is growing and changing daily, and one in which I will need to devote considerable and continuing attention.

38. **What, if any, steps would you take to change the way NARA archivists screen, accession, declassify, and make publicly available classified federal records?**

Do you believe Executive Order 12356 strikes the proper balance between protecting national security interests and the public interest in access to records of government?

If not, what improvements would you suggest?

I have addressed many of these issues in my response to Question 12 of my pre-hearing questions. I would like to add some emphasis to that response. NARA archivists appear to me to do an excellent job in the face of an overwhelming task. If NARA is ever going to position itself to successfully manage its declassification tasks, it must concentrate on the root of the problem: over-classification at the point of origin. Every document that can be left unclassified from the start, or upon which is designated a date-certain declassification, is a document that may not present a problem of declassification to NARA staff in future years. In this area the Archivist should try to help facilitate education in all agencies with classification authority on the need to carefully control the administration of that authority.

While I believe in public access at the earliest possible time, I am also concerned that NARA continue its long-standing policy of extreme care in the handling of classified material. I do believe that Executive Order 12356 has struck a balance. and now, as an independent agency, the Archives should continue to work within the specifications of the order and to evaluate its operation at regular intervals.

39. **Why did you permit the conversion from political appointee to career-reserved civil servant of Susan Metts?**

Why did you feel it was appropriate, as Acting Chairman, to make a permanent appointment to this career-reserved position at NEH?

Did you approve any other conversions of political appointees to career status?

I did not "permit" a "conversion" from political-appointee status to career-reserved status in the case of Mrs. Susan Metts.

Two investigators from the General Accounting Office, at the request of the Committee, inquired thoroughly into not only the hiring of Mrs. Metts, but also into the filling of three other career-reserved positions at NEH. It is my understanding that GAO discovered that every step of the hiring process in all four cases was approved by OPM and done in accordance with long-standing federal procedure. The GAO investigators told me in their final interview with me that they found the agency's actions to be appropriate every step of the way. I hired Mrs. Metts for the job she now holds because she applied for it and was the best candidate who did so. It was a perfectly appropriate decision.

More specifically, Mrs. Metts was a bona-fide applicant for the Senior Executive Service (SES) career-reserved position of Director of Administration at NEH. Her background and experience were evaluated against the job requirements of the position, as were all qualified candidates who chose to apply. She was determined to be among the best qualified candidates for the position by the Personnel Office, and her name, along with two other "best qualified" candidates, was submitted to me for consideration. I interviewed all three candidates and determined that Mrs. Metts' work experience and accomplishments made her the best qualified for the position. Her qualifications were reviewed and approved by the NEH Executive Resources Board and the Office of Personnel Management Qualifications Review Board as being of executive caliber; and subsequently, I authorized the NEH Personnel Office to offer her the position and she accepted.

Mrs. Metts was not "converted" from a political appointment to a career-reserved position. Rather, she legitimately competed with other qualified candidates for an SES career-reserved position and was deemed best qualified and selected.

I should also add that the current chairman of NEH, Dr. Cheney, reviewed the status of the office for which Mrs. Metts was selected and elevated the office and Mrs. Metts to the title of Assistant Chairman for Administration.

Finally, conversion is an inappropriate term since it implies that the Endowment merely approved a political appointee's movement into the career civil service without the individual legitimately making application into a bond-fide competitive merit staffing process. In that sense, I have not "converted" any political appointees to career status. During my tenure at NEH, it is my understanding that in addition to Mrs. Susan Metts, one other former political (Schedule C) appointee also entered into a legitimate competitive merit staffing process and was appointed to career status. This individual, Mrs. Virginia Carey Field, was at NEH as a Schedule C appointee under Joseph Duffey. She resigned and subsequently returned to the agency as a career government employee in 1983.

40. You stated at the September 9 hearing:

> Just before I came to the agency in 1980, there were 12 political positions at my agency. When I left being Acting Chairman, I had gotten that down to three. We went from 12 Schedule C, 12 political positions to three while I was Acting Chairman.

Your resume indicates you came to NEH in 1982 and served as Acting Chairman from February of 1985 until Mrs. Cheney was confirmed in May of 1986.

Please trace both the positions and the persons occupying those positions during your Acting Chairmanship. Please cite the titles, grade levels, position type, names of incumbents and their appointment status for the 12 political positions which you reduced to three, indicating what became of the 9 political positions and their incumbents. Indicate those positions which were abolished, reorganized, changed in title and/or duties, or converted to career status. Cite the titles, grade levels, career status, and names of NEH personnel before you appointed them to any of those 12 positions during your Acting Chairmanship.

For the three remaining political positions, name the incumbents, grades and titles. Are three poliltical positions the total number of political positions at NEH today?

Under Chairman Bennett's and my leadership (which began in 1982), the NEH did not seek to employ Schedule C staff in the numbers that had been used in the previous administration. The number of political appointees at NEH reached 12 in 1980. When my tenure as Acting Chairman ended in 1986, that number had declined to three. Except where otherwise noted in the following chart, when a position has been identified as abolished, the incumbent left both the position and the NEH during the following fiscal year. Information gathered in response to GAO requests with the aid of the

NEH Personnel Office revealed employees who held Schedule C positions are as follows:

		FY 1980		
Name	Title	Office	Grade	Position Changes
Rabinowitz, R.	Cong. Liaison	Chairman	GS-15	Position converted to non-career SES and re-established in 1982 as Schedule C position
Egan, Moira	Staff Assistant	Chairman	GS-12	Incumbent resigned
Battle, M.	Staff Assistant	Asst. Chm	GS-9	Position abolished and incumbent converted to career appointment und Joseph Duffey.
Neiman, J.	Interagency Liaison	Asst. Chm	GS-14	
Humphrey, T.	Cong. Liaison Spec.	Asst. Chm	GS-11	
Sale, D.	Cong. Liaison Spec.	Fed. Council	GS-13	Position abolished
Gray, H.	Staff Assistant	Fed. Council	GS-9	Position abolished
Knight, W.	Secretary	Fed. Council	GS-8	Position abolished
Clay, R.	Secretary	Dep. Chm.	GS-9	Position abolished
Carey, V.	Staff Assistant	Dep. Chm.	GS-12	
Wanger, B.	Public Affairs Off.	PAO	GS-15	
Evans, J.	Staff Assistant	PAO	GS-11	

		FY 1981		
Name	Title	Office	Grade	Position Changes
Guthrie, A.	Staff Assistant	Chairman	GS-13	
Neiman, J.	Interagency Liaison	Asst. Chm	GS-14	Position abolished
Humphrey, T.	Cong. Liaison Spec.	Asst. Chm	GS-11	Incumbent resigned
Carey, V.	Staff Assistant	Dep. Chm.	GS-12	Incumbent resigned
Wanger, B.	Public Affairs Off.	PAO	GS-15	Incumbent resigned
Evans, J.	Staff Assistant	PAO	GS-11	Position abolished an incumbent converted t career appointment un Joseph Duffey.

		FY 1982		
Name	Title	Office	Grade	Position Changes
Guthrie, A.	Staff Assistant	Chairman	GS-13	
Duke, M.	Special Assistant	Chairman	GS-11	Incumbent resigned
Sobel, L.	Special Assistant	Chairman	GS-11	Position abolished
Hall, J.	Cong. Liaison Off.	Asst. Chm.	GS-13	
Gwaltney, A.	Cong. Liaison Spec.	Asst. Chm.	GS-11	

FY 1983

Name	Title	Office	Grade	Position Changes
Guthrie, A.	Staff Assistant	Chairman	GS-13	Incumbent resigned
Hobbs, P.	Special Assistant	Chairman	GS-9	Position abolished
Hall, J.	Cong. Liaison Off.	Asst. Chm.	GS-15	
Gwaltney, A.	Cong. Liaison Spec.	Asst. Chm.	GS-12	

FY 1984

Name	Title	Office	Grade	Position Changes
Stewart, H.	Staff Assistant	Chairman	GS-12	Incumbent resigned
Hall, J.	Cong. Liaison Off.	Asst. Chm.	GS-15	
Gwaltney, A.	Cong. Liaison Spec.	Asst. Chm.	GS-12	Position abolished. Incumbent reassigned t Special Assistant

FY 1985

Name	Title	Office	Grade	Position Changes
Wilson, N.	Staff Assistant	Chairman	GS-11	Incumbent resigned
Hall, J.	Cong. Liaison Off.	Asst. Chm.	GS-15	
Gwaltney, A.	Special Assistant	Chairman	GS-12	
Poole, W.	Staff Assistant	Chairman	GS-14	Position abolished
Metts, S.	Public Affairs Off.	PAO	GS-15	Position vacated

FY 1986 (under Acting Chairman Agresto)

Name	Title	Office	Grade	Position Changes
Kerr, A.	Admin Assistant	Chairman	GS-10	
Hall, J.	Cong. Liaison Off.	Asst. Chm.	GS-15	
Gwaltney, A.	Special Assistant	Chairman	GS-12	

Schedule C appointments as of 9/19/86 (under Chairman Cheney)

Name	Title	Office	Grade	Position Changes
Kerr, A.	Admin Assistant	Chairman	GS-10	
Hall, J.	Cong. Liaison Off.	Asst. Chm.	GS-15	
Gwaltney, A.	Special Assistant	Chairman	GS-12	
Sullivan, M.	Public Affairs Off.	PAO	GS-15	

Data shown as of May of fiscal year unless otherwise noted.

41. Assume you are the Archivist and President Reagan and his White House staff are preparing to leave the White House after the President's term has expired. A number of former top White House aides have moved on to other appointed positions or to the private sector.

What steps would you take to ensure that federal records created by those individuals were segregated from staff personal papers and accessioned into the Archives?

What if any, steps would you take to assure that the complete record of the White House staff (both present and former members) has been maintained as a unit?

Would you take any steps before "moving day" at the White House to assure that papers and materials of the President and his staff are not destroyed, altered, or removed as personal papers, or otherwise lost to the ages?

It is my understanding that the White House Office of Administration through its central files unit has taken steps, in conjunction with the National Archives, to ensure the separation of presidential (federal) records from personal papers. The National Archives presently has in its custody presidential papers of some former White House staff members. Others remain in the White House as a continuing file.

During "check-out" procedures at the White House, staff members are informed of the distinction between personal and presidential papers. The National Archives also conducts exit interviews with staff members leaving the White House.

At that time they are again advised as to the differences between personal versus presidential papers.

In addition, the Archives has solicited former White House staff members (and heads of agencies) to donate their personal papers for deposit in the Reagan Presidential Library when established.

The hypothetical assumes a situation that I will never allow to develop as Archivist. It presumes a lack of coordination, cooperation, and communication between the Archives staff and the White House staff throughout all the years of a particular Administration. It is not in the best interests of any President to abscond with presidential papers, nor do I believe President Reagan or his staff would intentionally destroy, alter, or remove papers that should be deposited with the Archives. I fully expect to continue and strengthen the fine working relationships that Archives' staff enjoy with records managers throughout the government, including those at the White House.

42. According to the Master Plan for the Renovation of the National Archives Building, what deficiencies in the physical plant need to be remedied? Do you agree with the Master Plan? If yes, how would you pay for such remedies?

I have seen the Master Plan for the renovation of the National Archives building. It is an impressive, comprehensive, and expensive plan (estimated at close to $100 million). For example, volume 4 of the plan lists 21 separate architectural work sites, the estimated cost of completion for these alone is $3.7 million. The detail in the report is quite specific, extending even to such items as the renovation of flag pole bases (see page 102 of volume 4). Obviously, priorities must be evaluated in light of budget considerations, a task I will devote myself to as soon as possible. Since I have stated to the Committee my serious concern for increased public access and since the Plan speaks directly to these concerns (with such renovations and additions as an expanded exhibit area, new tour area, 600 seat theater, new family history area, etc.), I will work with the Congress directly in hopes of bringing much, if not all, of these plans to completion.

43. When the records of the Johnson Space Center in Houston are retired, would you leave them in the regional archives branch in Fort Worth or would you bring them to Washington? What criteria would you use to determine what records are held in Washington and in regional records centers?

Normally NARA procedures call for records of national significance to be housed in the National Archives. Items that are region-specific normally remain at the regional archives. When these records are turned over to a regional center, I expect standard procedures to be followed. In any event, even if determined to be of national significance, documents of value to users in the particular region should be made available by copy or other means. These procedures should no doubt apply to such records as those of the Johnson Space Center.

44. How long do you contemplate you will remain as Archivist?

I contemplate remaining as Archivist for as many years as my health, which is currently excellent, permits.

45. In your testimony and answer to pre-hearing questions, you said "the whole of my scholarly career has been devoted to understanding and writing about America -- its heritage, its history, its ideas."

In response to Senator Stevens, you stated '... the Archivist has to represent the Archives, gets to represent the material that is in those Archives, gets to make sense of the history in the Archives to the American people."

Where in the statute do you find the authority for the Archivist to perform this role?

-- cite specific statute.

The Archivist is appointed with the expectation that he or she shall "perform the duties and responsibilities of the office of the Archivist." This is at 44 U.S.C. Sec.2103(a). Among the Archivist's many responsibilities he or she is charged with providing for "preservation...description and exhibition" of the records under NARA's control. This is at 44 U.S.C. Sec. 2109. The Archivist is also charged under this section with "prepar[ing] guides and other finding aids to Federal records" and with working with the NHPRC to publish appropriate works and collections. Clearly the Congress saw the need for the Archivist to work towards the public's access to and understanding of the treasure of historical records in NARA, and to "make sense" of this collection's availability and importance to the public. The Senate Report on the NARA independence legislation spoke of the need "to preserve and make available a full and rich documentary historical record," (this is in Senate Report 78-373 at 10). As was noted by you on the Senate floor during the debate on the bill, the challenge facing NARA and the Archivist is large:

"We [the country] have a great deal to learn from those extraordinary men (the Founding Fathers). And we have a great deal to learn from the public officials who have followed them. That is what our National Archives is all about. One of [the] inscriptions on the National Archives building here in Washington reads: 'What is past is prologue.' We as a people, can benefit enormously by reviewing what has gone before us. We must understand our roots if we are to grow and prosper in a global society."

(This passage is found at the Congressional Record of October 3, 1984, page S 12815.)

I agree with your statement, and when I spoke of the need for the Archivist to represent the Archives and to represent the material preserved there, to the American people, I was referring to the Archivist's responsibility as stated in the statute, reports, and debates to announce again and again to the public that the Archives is open to the people and that it is a tremendous resource and an important one, and to urge them to use it as often and as thoroughly When Congressmen, such as Representative Clinger (speaking on August 2, 1984 and recorded at page H.8325) described the Archives as "a cultural and educational organization," I believe they were endorsing the idea of a visible and active agency. Again, I agree, and will do my best to ensure that NARA meets this goal.

46. What is your view on requiring federal employees in sensitive positions to submit to drug testing?

Would you aree that such testing is necessary at the Archives? If so, under what circumstances and for what types of sensitive positions do you believe such testing should be used?

I agree with President Reagan's statements that drug use is harmful to individuals and inappropriate within the federal workforce. The Executive Order recently signed by the President calls for each agency head to establish testing programs for employees in sensitive positions, which include employees with access to classified information. As the Archives does have employees with such access, a testing program will be necessary. It is premature, however, to project the size or nature of a testing program as all agencies, including NARA, are awaiting guidance from the Office of Personnel Management and the Department of Health and Human Services regarding the set-up of such programs. That guidance may well be affected by on-going court review of the executive order.

47. Do you anticipte reductions-in-force, downgradings, furloughs, and/or contracting out of certain functions in order to work within the Fiscal Year 1987 budget levels likely to be approved by Congress?

No.

48. What positions at NARA, in your view, should be open to political appointees?

Should political appointees fill any positions at Archives?

I understand that the Congressional Relations specialist is currently the only political appointee at NARA. This is possibly a spot that should continue to be filled by a political appointee. I can think of no others. I took NEH down a non-partisan course. I intend to do the same with NARA.

49. Do you intend to use IPAs at the Archives?

In what role(s)?
To supervise other NARA employees?

The use of assignees under the Intergovernmental Personnel Act (IPA) proved to be a tremendous resource at NEH. At NEH, the program achieved the objectives of the Act, through infusing into Endowment programs fresh perspectives and expertise, strengthening the management capabilities of the agency, and providing programs and developmental experience which enhanced the assignee's performance in his or her regular job.

I believe in the intent of the Act and view it as a successful program. In that light, I would be open to consideration of the legitimate use of these short-term mobility assignments as one of many management options when fulfilling the varied human resource needs of NARA.

I cannot, in the abstract, define the specific roles of assignees at NARA nor state when they might possess supervisory responsibilities. I can say that if the IPA mobility program is utilized at NARA, it will meet the goals and objectives of the Act as set forth by Congress and comply with all the requirements of the law.

RESPONSES TO FOLLOW-UP QUESTIONS SUBMITTED BY SENATOR MATHIAS

1. **What sources and with whom did you consult in preparing answers to questions provided you by the Committee in advance of its hearings on your nomination?**

I consulted with as many informed people as I could following my nomination. I studied everything of relevance I could, and continue to do so to this day, and will continue consultations and advice-seeking if confirmed.

The list of people I consulted with includes Frank Burke, Claudine Weiher, Susan Chase, Gary Brooks, George Scaboo, Herman Viola, Hugh Hewitt, Susan Metts, Tom Phelps, Harold Cannon, Jeffrey Field, Bruce Dearstyne, and Carole Huxley.

Among the sources I consulted were the various briefing books provided me by the Archives; the legislation that made the Archives an independent agency and the debates and reports that surrounded that legislation; two books written on the history of the Archives, and one book that described its collection; articles, essays, and reports on archival planning; newsletters of the NHPRC; back issues of the Archives' publication

Prologue, especially the essays in the 50th anniversary issue; pamphlets from the various branches of NARA describing their services; recent newsletters of the SAA; recent issues of Clearinghouse, put out by NAGARA; the Report of the Committee on the Records of the Government; and many other documents. I read and studied this material as conscientiously as I could.

2. Did any of those with whom you consulted prepare draft answers to the Committee's questions for your subsequent revision or submission?

I wrote my own answers, though I often worked from the notes I had taken during conversations with the people listed in my answer to the previous question and notes I took from my readings. The only person who provided me with any written advice was the General Counsel at NEH, Mr. Hugh Hewitt, who paid particular attention to analyzing and explaining for me the operation of statutes, regulations, and other legal sources, such as the Executive Order dealing with the declassification of documents. I should note that my answers should not be taken to reflect the opinion, in whole or part, of anyone with whom I consulted, because I never sought approval from anyone of my conclusions, which were independently arrived at and honestly stated.

3. **In your testimony of September 9, you said you received a call from the head of the AFGE local at the Archives on September 5 requesting a meeting with you and that you subsequently met with that person and discussed a number of issues in the course of a one-hour meeting.**

   Please describe the subjects discussed and any requests or assurance made by you or the person with whom you met.

   To your knowledge, did you or anyone else suggest to AFGE personnel that such a meeting occur or that the AFGE withdraw its testimony?

Prior to receiving these follow-up questions, I had prepared my response to post-hearing question 13, in which I reviewed my conversation with Mr. Jefferson. First, Mr. Jefferson's call to me to request an appointment came out of the blue. I had never met him and had never suggested to anyone that Mr. Jefferson call me. He told me he did this of his own initiative in order to judge my character as an administrator at NEH.

Our conversation covered a wide range of subjects, including the difficulties minorities sense in rising at NARA, the paucity of training programs for staff, the fact that I come from a union family -- that my father, uncles and grandfather were all union men, the successes we have had at NEH since 1982, our recruitment programs, our bridge positions and career ladders, the status of lunchroom facilities at NARA, and the problems employees have with heat and air conditioning at Suitland.

He suggested that he was interested in what impact my appointment would have on NARA and that he would like to talk to staff at NEH, including minority employees. This he did. He came back impressed with employee morale, with the spirit of equal opportunity at NEH, with our recruitment program, with the number of minorities in professional jobs -- generally with every possible indicator of my ability to serve as an administrator of a federal agency.

As I have mentioned, he changed his and AFGE's position on my nomination as a result of this meeting. I did not suggest nor ask Mr. Jefferson to do so, although I am grateful for his open-mindedness. I believe it is an excellent indicator of the cooperation and joint purpose I hope to instill throughout NARA, with union and non-union employees alike, among clerical and professional staff, and between government workers and the public.

4. With whom did you consult in preparing your May 15, 1986, speech to the statewide conference sponsored by the New York State Archives and NY State library in cooperation with the NY Document Conservation Advisory Council?

Although I had thought about what I hoped to say in my May 15 speech for many weeks, I wrote that speech in my hotel room the evening before it was delivered. The Committee knows of my long-standing interest in preservation and in my role in establishing the Office of Preservation here at NEH. Since that office has been in existence, it has provided me with a number of statistics and examples concerning the difficulties we face. Nonetheless, the speech was wholly and totally my own, and covered, as directly as I could make it, my own feelings and ideas on preservation; I did not consult with anyone regarding the content of that speech.

(I am happy to report that Preservation News, of the Library of Congress, asked me for permission to reprint the speech and it appeared just this past week.)

PREPARED STATEMENT OF LYNN CHENEY

TESTIMONY BEFORE THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
IN SUPPORT OF JOHN T. AGRESTO
PRESIDENTIAL NOMINEE TO BE ARCHIVIST OF THE UNITED STATES
AUGUST 13, 1986

I very much appreciate the committee's allowing me to come here today to testify on behalf of John Agresto. Although I have known Mr. Agresto only a short time, those few months have been spent working with him daily at the National Endowment for the Humanities, and on the basis of that experience, I would strongly urge that the Senate confirm him to be Archivist of the United States.

I became chairman of the National Endowment for the Humanities last May. Mr. Agresto had been acting chairman for more than a year before I was sworn in, and before that, he had for several years been the number two person at the agency. In other words, when I arrived at NEH, an innocent as to its inner workings, Mr. Agresto, wise in its ways, became my deputy. Now this is not the easiest human situation in the world, to have the novice supplanting and subordinating the veteran administrator, but Mr. Agresto made it work, and he did so with grace, intelligence, and unfailing good humor.

The transition to my chairmanship was made all the easier because the Endowment, when I arrived, was operating efficiently. The staff people there were working hard and enjoying their work. These things do not, of course, happen by accident. They are testimony to the skill with which Mr. Agresto had been managing the agency and to the fact that he had not contented himself with being merely a caretaker. He undertook several initiatives and projects during his time as acting chairman, including one called "access to excellence." The point of it is for the Endowment to find ways to reach out to minorities and to people in inner cities and rural areas -- to groups who may not have had as much opportunity as others to benefit from our programs.

I recommend him to you not just because he is a skilled and imaginative administrator, but because he is a man of moral seriousness who has thought long and deeply about the history of this country. I keep a notebook in which I copy passages that strike me as particularly insightful or well-written. It's no mean achievement to get into my notebook. James Madison is in there, and Herman Melville, and Teddy Roosevelt, and T.S. Eliot. And John Agresto is in there. Let me read you the passage of John's I've copied into my book. It's from a piece he wrote called, "Lincoln, Statesmanship, and the Humanities:"

> By an inseparable mixture of accident and inexorable destiny, Lincoln became President. The man who had taught himself Shakespeare and Euclid now ruled. It was, in one sense, a philosophic rule. His insights gave us back the reasons for existence. Through him we saw why this nation was "that last, best hope of earth," that last chance, as he said, for "all people of all colors everywhere" to have the burdens lifted from their shoulders. Through his mind we learned that the question was not, Can free democracies be established? but rather, Can they endure?"

This is not casual scholarship or cold scholarship. It shows a man thinking deeply about the history of this country in terms of enduring human values. Nor is the scholarship at which Mr. Agresto excels an exclusive kind. Clearly reasoned and plainly written, it is easily accessible -- exactly the kind of learning, it seems to me, we should demand from the national archivist.

Again, let me recommend him to you. He was a splendid choice on President Ronald Reagan's part, and, if you confirm him, will be an outstanding archivist.

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Testimony of Fred Rotondaro

Executive Director, National Italian American Foundation

Confirmation Hearing on

John Agresto, Presidential Nominee,

Archivist of the United States

before the

Committee on Governmental Affairs

United States Senate

September 9, 1986

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Senator Roth, Senator Eagleton, Members of the Committee:

It is a pleasure for me to be here today representing the National Italian American Foundation in support of the nomination of Dr. John Agresto to be Archivist of the United States.

The National Italian American Foundation (NIAF) is a national organization that works in a wide variety of fields. We provide scholarships and grants, conduct cultural conferences, historical conferences; we operate student exchange programs with Italy and we have sponsored exhibits of Italian art. We conduct seminars on themes such as Cooley's Anemia and on celebratory projects such as the discovery of America by Columbus. Our scope is varied both in regard to themes and geography.

We work with many other ethnic and cultural associations in these projects. We find in our work and our contacts with other associations a profound interest in the American historical and cultural past.

It is because of this interest that we appear today in support of Dr. Agresto's nomination.

I would be less than candid if I did not say how delighted we are at the fact that the grandson of Italian immigrants has been nominated to a post giving him a major policy role regarding the written records of our nation's past. There is a certain wonderful symbolic significance in this, a recognition that those who have in the past been called ethnic Americans are in fact now fully a part of the American mainstream.

However, proud as we are of his ethnic origin, we are more concerned with his record of accomplishment and with the testimony he has given concerning his views of the National Archives and the position of Archivist. And it is because of this record and of his views that we are so strongly in support of his nomination.

Dr. Agresto has spoken of the Archives as an "active agent of historical education and cultural awareness." He has spoken also of the need to use the Archives to not only collect and preserve, but also to "inform and disseminate." His testimony in August before this committee was , I feel, an eloquent statement of the need for a constant source of information in a democratic society and it was an appeal to use our resources, the resources of our rich and varied past, in a dynamic way to help our young people appreciate and understand both the historical facts and the meaning of our national history.

I identified myself in my opening comments as executive director of the National Italian American Foundation. Before taking this job, I have been a journalist, university teacher of American studies, anti-poverty agency director. I have discovered in all these posts the vital need of our young people to learn about the workings of government. Dr. Agresto spoke in his testimony about increased service and cooperation between the Archives and federal agencies, the scholarly community, and educational organizations. He identified the type of programs that would bring about this increased cooperation--programs that would, I am sure, have the substantial effect of improving the broad range of public knowledge about our nation's past. This would have, I feel, a significant impact on younger people as they explore with their parents and teachers the meaning of the American experience.

It is one thing, of course, to speak about needed new programs; it is another to have the administrative ability to implement planned programs. We feel that Dr. Agresto has certainly demonstrated his ability as an administrator in his work as deputy director of the National Endowment for the Humanities. Dr. Agresto was a leader at NEH in establishing programs to commemorate the upcoming anniversary years of the United States. A major theme of these programs was that the best thought of the past should become most widely available to the general public in the present. What better approach could an administrator and scholar take?

We must also cite the academic qualifications of Dr. Agresto and the scope of his writings on historical topics. I would point out to the committee members the general themes of his writings. He expresses a concern with the nature and purpose of education, the humanities, and America as a nation. He understands that scholarship should not be merely concerned with narrow, parochial themes but must be relevant to the needs of the present day without any sacrifice of the integrity of the scholar.

We strongly urge the appointment of Dr. Agresto as National Archivist. We feel he would make a valuable contribution to the public education of our nation.

Thank you for your time and interest.

Federation of Genealogical Societies
P.O. Box 220
Davenport, Iowa 52805

TESTIMONY OF RABBI MALCOLM H. STERN

Past President and Fellow, American Society of Genealogists

Mr. Chairman, thank you for the opportunity you have given me to speak on behalf of the largest group of users of the National Archives, the genealogists.

May I explain who we are? Genealogists are no longer the stereotypical "little old ladies in tennis shoes pursuing their descent from Charlemagne." That image died with the emergence of photocopying in the 1950's. The xerox machine and the microfilm have made it possible for everyone to trace his or her roots. The American Bicentennial and Alex Haley's popular work motivated a movement that has been estimated to involve twenty million Americans in researching their origins. As a consequence millions of your constituents now constitute nearly ninety percent of the researchers at 8th & Pennsylvania Avenue, and well over ninety percent of the users of the Archives' Regional Branches. They are a growing group, willing to spend their money to take courses, attend conferences and seminars, avid for the information they seek. Many of them have become professional researchers, passing high level tests in order to be certified. Their sophistication in scientific research has risen remarkably in the past decade. They have also become politically astute. They have a serious interest in the individual whom you approve for the distinguished position of Archivist of the United States.

In October of 1981, I appeared before a similar sub-committee to testify on behalf of the genealogical community in support of S.1421, the first Archives Independence Bill proposed by Senators Eagleton and Mathias. At that time I was half-way through my seven years of service on the Archivist's Advisory Council. My two terms ran from 1977 into 1984. I became well educated in the mission and functioning of the National Archives and Records Service. I learned a great deal about the multi-faceted responsibilities of our National Archivist.

During my service on the Advisory Council, Archivist James B. Rhoads retired, and I was given the opportunity of learning first-hand the process of selection of a new Archivist - a process that has been almost ignored in this present case. I was appointed a member of a blue ribbon national committee of representatives of Archives user groups. The opening for an Archivist was widely advertised in government and professional journals. Our committee had the responsibility of reviewing the resumes of all who applied and of communicating with individuals conversant with the capabilities and personalities of the applicants. In the consensus of the committee, few of the applicants demonstrated adequate qualifications for the important position of Archivist. We soon recognized that to secure the best candidates, we would have to solicit the interest of qualified individuals, and this we proceeded to do. As a result of our careful deliberations, we submitted a panel of - as I recall - some eight qualified candidates to an evaluating group of five senior executives of General Services Administration. (The National Archives, as you know, was then a subsidiary of the General Services Administration.) This group then proposed Robert D. Warner to become National Archivist, and he was appointed to that post.

From the outset of his becoming Archivist, Dr. Warner demonstrated great sensitivity to the needs and worth of the genealogical users, and we responded in kind. The Archives published a handsome and useful _Guide to Genealogical Research in the National Archives_ along with other helpful finding aids. To further the work of the Archives and to provide a channel of communication with genealogists, we created a Genealogical

Coordinating Committee composed of representatives of six major national genealogical bodies. When budget cuts hampered the Archives' ability to create further finding aids of use to genealogical researchers, the Coordinating Committee established a NARS Gift Fund, collecting one dollar per year per genealogist, funnelled from individual genealogical societies through the Federation of Genealogical Societies to the Archives Trust Fund. In so doing we became the first user group to raise funds for the Archives.

Budget cuts also threatened the Annual Archives Summer Institute on Genealogy, a program established in 1950. The Genealogical Coordinating Committee has assumed the financial burden of producing this Institute. The 37th annual Institute held this July was fully attended and enthusiastically received. The future of the Institute is again threatened, but only because of the overwhelming demands on Archives staff and space. As genealogists have become more sophisticated in their knowledge of the use of archives, so have historians, archivists, authors, and other users of the National Archives. In his testimony on August 13, Mr. Agresto spoke of his goal of creating programs of outreach. If he had read the materials furnished to him by the Archives, he would be aware of how many outreach programs are being carried out, despite budgetary limitations on an overworked staff.

Senator Mathias may recall my statement in 1981 that the National Archives has become a great national university. The Archives not only absorbs and retains information, but disseminates it. You, the members of Congress, know the value of the Federal Register, published under the jurisdiction and using the resources of the Archives. Many books have been published, both by government and by individuals, from research at the National Archives. In its various facilities around the country, notably in the main building and in the Presidential Libraries, the

Archives supervises a series of museums, a veritable showcase of American life and documentation.

I have underscored these aspects of the functioning of the National Archives, because they have relevance to the matter before you: the ability of John Agresto to assume the role of administering this large and significant enterprise of our government.

My first-hand knowledge of Mr. Agresto has been limited to his testimony on August 13 and what I read of him in the press. I must say that had his resume been submitted to the Qualifying Committee on which I served when Dr. Warner was selected, it would not have passed our committee. Nor did Mr. Agresto's personal statement reassure me about his professional qualifications for this assignment. He defended his "outsider" status by comparing his situation with that of Daniel Boorstin's nomination for Librarian of Congress. Mr. Boorstin came to that position from teaching posts at Harvard, Swarthmore, and the University of Chicago, and from serving as Senior Historian at the Smithsonian Institution. He was a published author, whose name was well known in scholarly circles and not totally unknown to the public-at-large. Mr. Agresto's credentials cannot compare. Furthermore, I am informed by Washington "insiders" and Library of Congress staff that Mr. Boorstin's administration of the Library of Congress has left much to be desired.

All of this leaves the genealogical community I represent with a number of questions whose answers I believe are basic to the decision of this sub-committee:

Why did the White House ignore the plea submitted in writing by a number of us that user groups be consulted in the selection of appropriate candidates for the important office of National Archivist, and why did they ignore the criteria developed and repeatedly submitted to the White House by various professional organizations?

Why has Mr. Agresto failed to make himself conversant with the role and mission of the Archives supplied to him in various reports, but absent from his description of the work of the Archives in his August 13 testimony?

If, as has been reported publicly, Mr. Agresto is the protegee of Secretary Bennett, why was he not considered eligible to become Chairman of the National Endowment for the Humanities, where he served as Assistant Chairman and Acting Chairman? When he was passed over, why has he not been given a commensurate post in the Department of Education where his Ph.D in Government and Constitutional History might qualify him?

The obvious conclusion has to be that John Agresto's nomination is an act of political cronyism. If this is the case, then the President in nominating him and you in ratifying him would be guilty of violating Public Law 98-497 that originated as S.905, approved by the Senate on June 21, 1984, and signed by the President on October 19, 1984, to become effective April 1, 1985. This law established the independence of the National Archives and Records Administration.

Its second paragraph, as Senator Eagleton indicated on August 13, states clearly:

> The Archivist shall be appointed without regard to political affiliations and solely on the basis of the professional (emphasis mine) qualifications required to perform the duties and responsibilities of the office of Archivist.

May I also respectfully remind you of one aspect of the climate in which that sentence was written into the bill, indeed one of the major motivations for separating the the National Archives from the General Services Administration; namely, the failure and inadequacy of politically appointed Administrators of the General Services Administration to comprehend the mission and function of the National Archives. Some of you probably know that the actions of the last three Administrators before this Independence Bill was ratified so lowered morale in the Archives that high level staff was leaving and output deteriorated.

Many of the Archives department heads have the equivalent in education of John Agresto. Their work requires post-graduate degrees. Many exceed him in experience in government and in administrative know-how. To saddle them with an Archivist whose qualifications they could not respect can only lead to the departure of some unique specialists who would be difficult to replace.

As I said at the outset, we genealogists do have a vested interest in the person who becomes Archivist of the United States. We worked hard to support the independence of the National Archives. Indeed, we so flooded the Carter White House with mail that word came back to the Archives, "Please tell those 'genies' to stop."

Gentlemen, we labored with you to effectuate Public Law 98-497. We will not sit idly by and see it violated.

Thank you.

The Society of American Archivists

SAA

TESTIMONY OF ANN MORGAN CAMPBELL
Executive Director, Society of American Archivists
before the
SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
on the Nomination of John Agresto
for Archivist of the United States
August 13, 1986

The Society of American Archivists in the world's largest professional association for archivists and manuscript curators. The organization celebrates the fiftieth anniversary of its founding this year.

My name is Ann Morgan Campbell. I have served as executive director of the Society of American Archivists since 1974. In 1975-77 I was a member of the National Study Commission on the Records and Documents of Federal Officials. I appreciate the opportunity to appear here today to testify on the nomination of John Agresto for the position of Archivist of the United States and to share with you my concerns and those of many of my colleagues about the qualifications of Mr. Agresto for this position.

None of us are terribly comfortable with opposing a Presidential nominee. However, in view of the uniqueness of this appointment, our close involvement with the issues leading to independence, and our role in that hard fought battle for this legislation, we have now resolved to do so. We have done so only after the most serious consideration of this nomination. We believe strongly that the nomination is insensitive and inappropriate--to the archival and historical communities who fought so hard and so long for the independence of the Archives and for professional criteria for the Archivist to be written into law; to the many groups who developed criteria for the position and were never asked for our opinions on this nominee; and, quite frankly, to the future of the Archives as an institution and to the documentary heritage of the United States. We urge that Mr. Agresto not be confirmed by the Senate for this position. This is no reflection on Mr. Agresto or his credentials for other positions. This is a reflection on the match between Mr. Agresto's credentials and the qualifications required for this particular position.

As the Committee is aware, the 1984 legislation reestablishing the National Archives as an independent agency was enacted in large part to avoid repetition of past attempts to politicize archival programs and decisions and to preclude the threat of such politicization in the future. Therefore, the Archives law specifically stated that:

> The Archivist of the United States shall be appointed by the President by and with the advice and consent of the Senate. The Archivist shall be appointed without regard to political affiliations and solely on the basis of the professional qualifications required to perform the duties and responsibilities of the office of Archivist. The Archivist may be removed from office by the President. The President shall communicate the reasons for any such removal to each House of the Congress.

The Conference Report also stated that, and I quote:

> " . the conferees intend that he be an officer performing professional archival and records management functions insulated from the political orientation of a particular administration. Because of the non-political nature of the Archivist's duties, the office ought not to change hands automatically with the election of a new President.

In enacting this unusual--if not unique--provision of law, we believe the Congress established for itself a strict criteria by which the nominee for this position should be judged.

I think we all agree that the President, as the duly elected representative of the people, should be afforded the opportunity to appoint candidates of his own choosing to policy positions, absent strong evidence that the candidate cannot perform in the position. That is to say, normally candidates should be given the benefit of the doubt.

The position of the Archivist of the United States, however, is special. It is special because the Congress created the position that way, knowing that the Archivist and the agency he or she leads had little or nothing to do with implementing Presidential policies and everything to do with neutral, professional trusteeship. The very nature of the position mandates that it be non-partisan and--equally important--that it be perceived as such.

Therefore, we believe that any candidate for Archivist of the United States should be judged not on lack of negative evidence on his character and reputation but on a positive abundance of relevant professional qualifications and a demonstsrated ability to assume leadership of the National Archives in a totally professional and non-partisan manner. This first Archivist appointment under the new Archives law is critical as a precedent; it is further critical to ensure the vitality and viability of the institution into the 21st century. We believe a careful review of the nomination is what the Congress and especially members of this Committee mandated in the Archives independence act, and we believe that this is what is required to ensure the continuity and impartiality envisioned in that legislation.

What then are the qualifications for this position and how do Mr. Agresto's past experiences relate to those qualifications? Several lists of qualifications were drawn up by interested organizations prior to the selection of a nominee. These criteria were given to the White House during repeated efforts by archival and user groups to meet with staff members of the White House Office of Personnel to share their views. They were also shared with staff members of this Committee. It is my understanding that both Senators Mathias and Eagleton, the primary sponsors of the independence legislation, urged the White House to consult with Archives' user groups during the search for a qualified nominee. Unfortunately, the SAA was never consulted.

The appointment is similar to a judgeship, in that it may be a lifetime appointment and should be viewed as such. Carrying this analogy one step further, the nominee for this position has been deemed *not* qualified by the equivalent of the American Bar Association, the Federal Bar Association, the National Trial Lawyers Association, and all other reputable professional organizations. Confirmation of Mr. Agresto would fly in the face of the unanimous judgment of the professional, historical, and user groups and contradict the language and intent of the legislation.

The criteria developed by the various groups, some of whom are represented here today, varied in detail but most contained the following common elements:

(1) Experience in and a commitment to selecting and preserving government records for their administrative and research value, a broad understanding of archival concerns and practices, and a demonstrated appreciation of the role of historical research in primary records in documenting our government's policies, programs, and actions.

Mr. Agresto has had no such experience. He has no record of dealing with decisions of what is a federal record, of what to keep, of what to preserve, or knowing the universe of documentation or methodologies of archival research upon which to base such judgments. His writings give no evidence of the use of archival records or research in primary, unpublished sources. He lacks the requisite knowledge to make informed, discriminating archival choices.

(2) The ability to administer a large organization.

Mr. Agresto's administrative experiences are of short duration and with a much smaller and less complicated organization. His fifteen months as acting chairman of the National Endowment for the Humanities were hardly long enough for him to be considered a seasoned administrator capable of efficiently managing the Archives with its multiple program missions, a staff of 3000, an operating budget of $100 million, 30 buildings, 6 million square feet of floor space, and employees of all races and occupations ranging from laborer to chemist. Furthermore, the operations of the 250-employee NEH are significantly different from and simpler than those of the Archives. NEH gives away money in grants as determined by a peer review process; its own operating budget is small. The Archives, on the other hand, is a personnel-intensive agency, requiring the leadership and direction of 3000 employees in widely dispersed locations.

While there are seasoned administrators in the Archives to whom much can be delegated, the Archivist sets the tone, the direction, and the standards. There are some things--those that affect the fundamental mission of the Archives--which simply cannot be delegated. This is not a position for on-the-job training.

(3) Sufficient prestige and stature to work effectively with heads of other executive agencies and Congress.

The responsibility, prestige, and authority of this position merit a person of national stature--either a seasoned administrator, a distinguished scholar, or a distinguished member of the archival or information management community. Mr. Agresto has many academic credentials, but we do not believe him to be either a distinguished member of the scholarly community in his field of political science or a person of national stature in any of the related professional communities.

(4) The ability to adapt the National Archives to new information environments and an ability to lead the Archives and other government agencies in the use of technology for the benefit of both current recordkeeping and future research.

The Archivist of the United States must be a leader: within the Archives, within the federal government, within the archival profession in the United States and around the world, within the information management profession, and within the scholarly research community. The revolution in recordkeeping brought on by the age of the computer has created an enormous need for government-wide professional leadership to grapple with the problem of capturing and retaining electronic information for the use of future generations. Other equally significant revolutions are taking place in the technologies available to archivists for use in preserving and providing access to historic documents. The Report of the Committee on the Records of Government, issued in March 1985, recognized the urgency of the situation, warning that "documentary treasures are threatened with loss and destruction" if they are recorded in electronic formats. The Archivist must provide fresh ideas and a concerted effort to put the National Archives in the forefront of this technological revolution.

(5) The capacity to assert a leadership role for the National Archives among agency heads, federal records managers, archivists, historians, political scientists, economists, and other scholarly users, genealogists and related constituencies.

To quote again from the Report of the Committee on the Records of Government, "The next Archivist of the United States . . as head of the government agency whose primary mission is records and archives administration . . must provide visible and dynamic leadership." Agencies throughout the government produce records and the Archivist must be a person of such stature and integrity that agencies will be willing to entrust their documents to his care. He or she must stand for impartiality and fairness in dealing with agencies, researchers, and archival colleagues around the world. He or she must cooperate and coordinate the Archives' mission with Cabinet officials and agency heads. He or she must collaborate with other institutions and organizations in pursuit of supra-institutional goals, and he must foster the advance of the continuing critical evaluation and improvement of professional theory and practice in archives.

We do not believe Mr. Agresto can be a leader in a profession he neither knows nor understands. His record shows no evidence of knowledge or concern for the problems of harnessing technology, obtaining the full range of records necessary to document American government, anticipating the research needs of the genealogist as well as the scholar, cooperating with rather than struggling against the Congress, working with and gaining the confidence of the leaders of other agencies throughout the government.

Finally, the Archivist of the United States must be non-partisan and perceived as such. He must be so to lend credibility to the many sensitive decisions he must make and to ensure the impartiality of such decisions. He must handle the records of all future Presidents, Republican and Democrat. Presidents of both parties and the American public must have confidence in his honesty and fairness in managing the Presidential legacies.

The Archivist must administer current and sensitive records, even records whose release to the public might be embarrassing or damaging to federal agencies. Any real or perceived conflict of interest which arises from an association with a particular administration impairs his objectivity. Like archivists everywhere, he must continually make important and delicate judgments about access to records, balancing the demands for public scrutiny with the needs for privacy and confidentiality of information found in the records. While access decisions always leave one side or the other unhappy, the Archivist's personal probity and professional integrity must be sufficiently impeccable, such that, while disagreeing with the decision, the disappointed party has confidence that the decision was made with objectivity and impartiality.

The Archivist must resolve difficult legal and political questions, such as those arising from the litigation over the Nixon Presidential materials and concerning questions of executive privilege generally. In court decisions on the Nixon materials the "unblemished" professionalism of the archivists was an important factor in the ultimate decision to entrust the papers to the Archivist. A key factor in the continuing lawsuit over disposition of FBI records has been the integrity of archival decision-making. The Archivist is no less than the trustee of the records for future generations. His personal and professional responsibility is not to interpret or seek the elusive truth in the records but to preserve truthfully those materials in which researchers may seek answers.

Mr. Agresto has no record of dealing with the delicate problem of administering the political legacies of Presidents of both parties or the current and sensitive records of federal agencies. Nor does he have experience in making difficult judgments on access to sensitive papers and records.

We believe the Archivist ought to represent through his or her own achievement and work the values and aspirations of the community of archives professionals, scholars, and user groups. It is not only a matter of "credentials"--it is a matter of being known to us, of having shared values and of being a powerful spokesperson for the archival profession and its scholarly and other user communities. Mr. Agresto's background and experience stand in sharp contrast to the six previous U.S. Archivists, all of whom were prominent in the activities of the historical and archival communities. All past Archivists of the United States, to give just one example, were Presidents of the Society of American Archivists. Although we may have had our disagreements with past Archivists over specific decisions or program directions, all were respected because of the personal professionalism they had achieved in archives and records management. What a sad irony if this first Archivist under renewed independence was the least qualified of all.

Our concern is not that Mr. Agresto fails the test as an "ideal" candidate, but that he fails to meet any of the important criteria for the position. While we as archivists would naturally like to see a nominee with a background in archival or records management, we believe a distinguished scholar from any one of several scholarly disciplines or a strong public administrator would also be an appropriate nominee. Further, we would expect that a President would nominate a candidate sympathetic to the goals of his administration, and that is not the basis on which to oppose a nominee. Our concern is that it appears that Mr. Agresto's political connections are his sole qualification for nomination. Mr. Agresto's professional qualifications for the job are only incidental to the Administration's need to find a place for a friend. In fact it appears that we have a partisan choice for a non-partisan position. The position of Archivist of the United States is not a "plum" position for a short-term political appointment. It is and must be a long-term commitment by Congress and the executive branch for continuing support in the position through changes in political administrations.

Mr. Agresto is not a professional in the terms of the Archives legislation. He is not now--and cannot easily become--a leader in the archival and governmental community. He is assuredly not non-partisan.

We strongly believe that Mr. Agresto's nomination does not fulfill the mandate of the Archives legislation enacted by this body. We urge the Committee with all due respect to examine Mr.

Agresto's nomination in light of this unique legislative history rather than the "benefit of the doubt" criteria appropriate for other nominations. Securing a strong impartial leader with outstanding qualifications, thereby ensuring continuity of leadership, is the final crucial step of the Archives independence movement.

STATEMENT BY GERALD GEORGE, DIRECTOR

THE AMERICAN ASSOCIATION FOR STATE AND LOCAL HISTORY

Before The

COMMITTEE ON GOVERNMENT AFFAIRS

U. S. HOUSE OF REPRESENTATIVES

13 August 1986

Washington, D. C.

- - -

Gerald George
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AMERICAN ASSOCIATION FOR STATE AND LOCAL HISTORY
172 Second Avenue, North, Suite 102, Nashville, Tennessee 37201

Mr. Chairman:

My name is Gerald George. I am director of the American Association for State and Local History, a nonprofit educational and professional organization headquartered in Nashville, Tennessee. Founded in 1940, AASLH serves historical societies, museums, historic sites, archives, historical libraries, teachers, scholars and others who are preserving the heritage of states, localities, and communities of all kinds. I represent 6,000 institutional and individual members throughout the United States. And we are very concerned about the future of the National Archives and the quality of its leadership.

I greatly appreciate the opportunity to express that concern to you at this hearing. Yet I take no pleasure in what I am about to say. We bear Mr. John Agresto no ill will and feel no personal antagonism towards him. But the National Archives is of such significance to us all, and his experience in relation to it so limited, that we must urge you to reject this nomination and request from the Administration a nominee with stronger qualifications.

Why does the American Association for State and Local History, whose members are engaged in historical work at the grass roots across the country, care so much about a national, federal agency?

The reasons are several:

For one, the extraordinary collections of the National Archives include documents pertaining to the histories of states and localities. Material recently published by the Tennessee Historical Society on the federal occupation of Nashville in the Civil War, to take but one typical example, drew heavily on documents and photographs in the National Archives.

Additionally, the National Archives and Records Administration does not operate only out of Washington. As you well know, its collections are accessible through an immense, and immensely valuable, system of branch operations spanning the United States. Included are seven operating Presidential libraries, plus the Nixon and Carter projects in development and the prospective Reagan Library; also, eleven regional archives, and fourteen federal records centers, from Boston to Los Angeles, from Atlanta to Seattle, from Chicago to Fort Worth. Moreover, the National Archives has developed programs through which material from collections in certain places can be made available, on microfilm for example, for study and research elsewhere. The effective administration of those programs--and of the National Archives' regional operations in general--is of great importance for people working in state and local history.

Finally, we all look towards the National Archives for leadership. We need leadership in technical innovation, in such areas for example as sophisticated, scientific conservation of paper documents and photographs. Our own association has published guidance on the care and use of archival collections provided by National Archives staff. But also, we need leadership from NARA in defining the public interest in archival materials, in dealing with issues of accessibility of historically important but politically sensitive documents, and in exercising nonpartisan judgment with credibility and integrity.

Regretfully, we do not believe that a Ph.D. in government, some teaching experience, and a relatively short term in the administration of the National Endowment for the Humanities is adequate preparation to provide that kind of leadership, or to administer a federal agency of NARA's size, scope and responsibility. The Administration did not nominate Mr. Agresto to be chairman of the Humanities Endowment, an agency with 224 employees and a budget for administration of $13.5 million, whose sole task is to administer grant programs, and of which he was acting chairman. Why then does the Administration consider Mr. Agresto qualified to head the National Archives, which has 3,200 employees, a non-grant administrative budget of $93 million, and immensely more varied, complicated, and sensitive functions?

If political considerations are the answer, then the Agresto nomination is a secondary issue to these hearings. The real issue is the credibility of the National Archives. In legislation that made NARA an independent agency, the Congress recognized that the National Archives cares for all kinds of political papers including the records of presidents both Democrat and Republican, and that its administration must be nonpartisan beyond question. Indeed, the National Archives seeks gifts of papers from politically prominent people of different parties, whose willingness to donate material depends on assurance that it will be used in a non-partisan manner. Therefore the Congress wisely wrote into the law that the U. S. Archivist must be appointed "without regard to political affiliations and solely on the basis of professional qualifications."

The professional qualifications of Mr. Agresto are less than clear to us. We therefore respectfully ask you to reject this nomination on grounds of upholding the requirements of the law. Thank you very much.

ORGANIZATION OF AMERICAN HISTORIANS

TESTIMONY OF PAGE PUTNAM MILLER

Representative of the Organization of American Historians
before the
SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
September 9, 1986

I am Page Putnam Miller, Director of the National Coordinating Committee for the Promotion of History, an umbrella group consisting of forty-four historical and archival organizations. Today I am speaking specificially for the Organization of American Historians as Dr. Graebner could not be here for this second session because he is attending a wedding in the mid-west. My remarks today are based on extensive conversations with Dr. Graebner, Dr. Joan Hoff-Wilson, the Executive Secretary of the OAH, and Professor Leon Litwack, professor at the University of California, Berkeley and the current President of the Organization of American Historians. Dr. Graebner submitted testimony on behalf o the Organization of American Historicans on August 13. On behalf of the OAH and Dr. Graebner, I would like to submit for the record his testimony and summarize a few additional points.

The Organization of American Historians is one of sixteen historical, archival, and related professional and user organizations which have taken an official positions opposing the nomination of John

Agresto for Archivist of the United States. Just this week the Southern Historical Association and the Council of the Coordinating Committee for Women in the Historical Profession joined the list of opposing organizations.

The OAH does not take a formal position on such issues without a great deal of thought and consideration. The members represent all shades of the political spectrum. The OAH opposes this nomination only because we perceive an almost overwhelming imbalance between what we believe is required for this position and what the current nomination reflects. We are certainly not opposed to Dr. Agresto because he is not a historian, as stated by Dr. Agresto earlier in this hearing. We do not care from what scholarly background the next U.S. Archivist comes. But, if the nominee lacks experience in archives or records management, then his scholarship in whatever field, should be distinguished. To characterize the opposition of the OAH and the fifteen other groups as simply concern that Dr. Agresto is not an archivist and not a historian, is to ignore the breath and depth of the opposition. It also fails to recognize that not a single professional or user group has formally endorsed Dr. Agresto.

One might ask, "why all the concern about this position?" It is because the National Archives is truly a unique institution. The Archives' mission is that of trusteeship -- a trust to preserve for the use of future generations those records documenting their history and the actions of their government. It is not a position of advocacy. Nor is it one of effecting programs to further the goals of a particular administration, or point of view, however popular and however valuable. The National Archives is, by definition, and by necessity, neutral, impartial, balanced, and professional. It has been in the past and must remain so or the Archives as an institution is changed. We are frankly fearful of any such change and of what it would mean for current users and for future generations.

The Archives houses and administers the records of the Executive Branch, the Judicial Branch, and the Congress. It is responsible for very sensitive records. This mass of paper, some 3 billion pages, is for the most part, governed by a few broadly worded laws, regulations, and deeds of gift. A good deal is left to the discretion of the Archivist of the U. S. The job is one of a delicate balance -- the right of citizens to know about their government and the right of individuals to privacy and the legitimate needs of government for closure of appropriate records for appropriate periods of time.

How has the balance been carried out so successfully in the past? Why in all the history of the National Archives have there been no "leaks" from sensitive records, or from the Nixon materials? Not because the pressures have not been and are not always there. Why are we not reading from time-to-time about unauthorized access to records, privileged access to records, the premature or unauthorized release of records to embarrass or harass some official or to reflect in one way or another upon a controversial topic of current interest? Why are we not hearing continuous conplaints from researchers that the Archives is withholding some materials to protect -- to protect an individual, a philosophical point of view, a program of a particular administration?

We submit is is because the Archives since its inception in 1934, has been run by professionals whose values were known and whose judgment was respected. Although there may have been difference of opinion on a particular call, few, if any, could or did attack the motivation. This absolute impartiality, this refusal to be swayed by either side, this loyalty solely to professional standards is a hallmark of the Archives and its professional staff.

It was to eliminate these political pressures, or perhaps as important, the appearance of any such pressures that the imdependence bill for the Archives was enacted. The special provisions written into the law were designed specifically to protect this integrity and professionalism. The OAH and many of the other organizations which have formally opposed this nomination worked for independence for the Archives for more than six years. An important part of that effort was to secure the special provision of law to insulate the position of Archivist. This nomination is the last setp in the hard fought independence movement. We urge the committee to carry out what the law envisioned, and to set the ground work for future appointments. John Agresto should not be confirmed as Archivist of the U.S. His background and experience stand in sharp contrast to the six previous U.S. Archivists, all of whom were steeped in the activities of the historical and archival communities. He is not a seasoned administator. He is not insulated from "a particular administration." He is not a candidate of sufficient stature to work effectively with heads of agencies. He is not a person of national stature in his field of political science. Given the fact that he seems to lack all the requisite skills that we deemed important, it appears that his nomination is based solely on his connections with this particular administration.

To affirm this nomination is to affirm that this position is no different from any other position within the Administration and thus denies the uniqueness of the position of U.S. Archivist, the keeper of this nation's records.

Before concluding this statement, I would like to respond to Dr. Agresto's repeated declaration during the earlier part of this hearing that the primary role he would assume as Archivist would be one of a teacher: to interpret the history of the United States. It reminded me of Teddy Roosevelt saying the Presidency was a "bully pulpit." Dr. Agresto seems to see the role of Archivist as similar to that of the President -- an advocate. Historians and other users of the Archives profoundly disagree with this view of the role of the U.S. Archivist.

Let me explain to you why it makes historians nervous to hear that the nominee for Archivist of the U.S. sees as his principal job the interpretation of American history.

First of all, we worry that if he focuses on interpretation the real work of the archives -- preservation of documents, the preparation of finding aids upon which all researchers depend, the even-handed administration of access -- will be shunted aside. First and foremost, it seems, the Archivist must manage the vital work of the National Archives.

Second, we worry about the word "interpretation." As a historian, I know there are many ways to interpret documents. I don't agree with some of my colleagues about the causes of the Cold War, for instance, and yet we are working with the very same documents. What kind of interpretation will an Archivist of the United States make? And why? Because it is politically fashionable to the White House at that time?

Third, it is the job of the Archives to make available to all researchers on terms of absolutely equal access the research materials they require. When scholars find an Archivist of the United States promoting some particular view of history, they must wonder whether, if they hold a contrary view, will they get the same service as the scholar who agrees with the Archivist? Will they be given the same information about the opening of new records as the person who agrees with the Archivist? Will their requests for openings of records under FOIA receive the same response? Or, worse still, will the scholars who agree with the Archivist's interpretation be given earlier notice and first access to previously closed materials?

Dr. Agresto says he can "interpret and explain the American experience broadly and widely." He says the Archivist "has to be a person who can be a teacher." The OAH strongly disagrees. The Secretary of Education may be a teacher. But the Archivist of the United States must preserve and make available to others on a totally impartial and unbiased basis the records in the Archives, so those others -- the research community -- may interpret American History.

This is the first appointment of an independent U.S. Archivist. It is intended as one for a lifetime. It establishes the criteria for those who will follow. It determines whether this Archivist will truly remain in office through various administrations "performing professional archival and records management functions insulated from the political orientation of a particular administration." We urge the committee to oppose the nomination of John Agresto for the position of impartial trustee of the nation's records. Thank you for the opportunity to appear before this committee today.

STATEMENT
OF
ANNA K. NELSON
on behalf of the
SOCIETY FOR HISTORY IN THE FEDERAL GOVERNMENT

SENATE GOVERNMENTAL AFFAIRS COMMITTEE
August 13, 1986

My name is Anna K. Nelson. I am a member of the American University Department of History. In the last fifteen years I have used the resources of the National Archives Building, every presidential library except the Hoover Library and the National Records Center at Suitland, Md. For the last decade I also have participated in several studies of government archives and records. Most recently I was Project Director of the privately funded Committee on the Records of Government.

I appear before the Committee today as a representative of the Society for History in the Federal Government. The Society is an organization that brings together historians, archivists, curators, librarians, editors, preservationists and others who participate in the various historical functions of the federal government, or who are interested in preserving the professional integrity of those functions. Members of this society are among the most active users of government records in the country.

In May, 1985, after thirty-five years of being subsumed within the General Services Administration, a newly reorganized National Archives and Records Administration emerged as an independent agency. Defying the trend toward more centralization of government functions, Congressional sponsors were convinced by the events of the last decade that the nation's records should be removed from the supervision of a politicized agency primarily concerned with real estate, building maintenance and office supplies.

In order to give the new agency the necessary stature within the government bureaucracy as well as ensure that the head of the National Archives, the Archivist of the United States, would have the proper background and experience, the legislation stipulated that the archivist would be appointed by the president with the consent of the Senate. In addition, the report that accompanied the legislation specifically noted that the archivist should be chosen "without regard to political affiliation and solely on the basis of the professional qualifications required to perform the duties and responsibilities of the office of Archivist."

This stipulation recognized the unique status of both the Archivist and the National Archives. Unfortunately like many other American citizens, administration officials view the archives as merely the home of the Constitution, Declaration of Independence and other "historic" documents, some of which are useful to a few historians who write lengthy tomes for other historians to read. Those who have never done research in the National Archives even confuse it with the Library of Congress, since both are government institutions where people go to find information. Obviously, any intelligent person with some administrative skills and a past or present academic tie could run such an agency.

But the National Archives and Records Administration is more than the final resting place for a few historic documents, and the Archivist of the United States has responsibilities to society that are quite different from those of the Librarian of Congress. The National Archives has a dual role in our society. It is both an administrative agency with an important mission in the federal government and a cultural agency that preserves the nation's history. Unlike the Library of Congress, it was not created to hold books, magazines or even manuscripts; the National Archives was established to preserve the records of our federal government.

Both government officials and citizens often forget the extent to which records serve the public interest. Government records document the history and intent of public policy. They provide the information necessary for planning future programs and evaluating past performance. Records assure accountability to legislatures and the public, for they contain information about the management and expenditure of public funds as well as the course of decision making. Records also contain basic data for medical, scientific, or economic research. Finally, records form the basis of our understanding of American government and history. Behind every public school history textbook are the footnoted books and articles written by scholars who used documents in the National Archives.

It goes without saying that the next Archivist of the United States should be someone who can both manage a bureucratic agency and appreciate the cultural contribution of a public archives. However, there is an even more important requirement. In evaluating a presidential nominee for this position the Senate should ensure the continuation of the non-partisan, professional status of the National Archives.

The records preserved by the National Archives are created by thousands of political appointees and civil servants who staff executive agencies, congressional committees and the judiciary. The laws that regulate the final disposition of federal records are by necessity self-enforcing statutes. For fifty years, the professional archivists who have managed the agency have endeavored to earn the trust of politicized agencies through their own non-partisan professionalism. In order to preserve important documents recording high level policy decisions and make them available to the public, the National Archives must collect those records. It must convince civil servants and political appointees alike that it is perfectly safe to send highly confidential and controversial records to the federal records centers so that in the distant future those records might become "archives." If government officials suspect that the leadership of the National Archives reflects the interests of a particular administration rather than professional neutrality, the result will no doubt be a future archive full of the unimportant or trivial.

Both as the assistant to the former Chairman of the National Endowment of the Humanities, William Bennett, and as acting chairman after Bennett's departure, the nominee illustrated interest in American history and support for the preservation of its recorded past. Why then has his nomination inspired such strong opposition in the historical community? It is because he is so thoroughly identified with the partisan positions of the Reagan administration which he has loyally served. It is this attribute, so valuable to those presidential appointees who must carry out administration policy, that disqualifies him for this unique position to which he has been nominated.

A non-partisan professional archive is essential to preserve the integrity of our records and our history. The Archivist of the United States directs the agency that houses the records of all executive agencies and Congressional committees, declassifies documents from the recent past, and administers all presidential libraries from Hoover to Carter. It is also the agency that holds the records of the Nixon administration and will establish and administer the Reagan presidential library. In carrying out their statutory functions, the Archivist and his assistants are continually faced with countless decisions concerning private interests and public access. Thus, like Caesar's wife, the leadership of the National Archives must be above suspicion.

Documents form the basis of our representative democracy as well as our history. To maintain public trust in our government and our history we must not only preserve the integrity of our public records but the agency that houses them.

Statement prepared by

Thomas E. Mann

on the nomination of

John Agresto

as Archivist of the United States

Senate Committee on Governmental Affairs

August 13, 1986

Mr. Chairman, my name is Thomas Mann. I am the executive director of the American Political Science Association. I appear before your committee today, however, as an individual political scientist and not as a representative of the American Political Science Association, which has taken no position on the nomination of John Agresto as Archivist of the United States.

I support John Agresto's nomination as Archivist. That support is based on three primary considerations.

First, I believe Agresto is professionally qualified to be Archivist. He has an impressive scholarly background in political science, a discipline vitally concerned with the operation of the National Archives. His scholarship, most notably his book, The Supreme Court and Constitutional Democracy, commands the professional respect of leading scholars in the field of public law and political philosophy. Through teaching, writing and participation in scholarly meetings, he has taken an active role in the professional life of his discipline. Moreover, his particular scholarly interests in the Founding period and the American constitutional system lead naturally to an appreciation of the special importance of basic documents and primary source materials.

I believe Agresto is also qualified by virtue of his administrative experience. Few scholars can match his record of four years of high-level administrative experience in a federal agency, the National Endowment for the Humanities, whose mission is so closely tied to that of the National Archives. Based on my my personal observations and the accounts of others, Agresto performed ably and successfully in his posts as Assistant Chairman, Deputy Chairman, and Acting Chairman of NEH.

My second reason for supporting John Agresto as Archivist has to do with his personal qualities. I know him to be intelligent, honest, and sensible. He is a principled man, with clear views about the strengths and weaknesses of the American constitutional system, yet he displays no trace of self-righteousness or ideological fervor. In fact, Agresto embodies those particular American civic virtues of accommodation and moderation about which he often writes. In my dealings with him, I have found him to be fair-minded and tolerant of diverse intellectual approaches and political views. One need only examine Agresto's scholarly works and speeches, all written in an unusually felicitous style, to conclude that he is a man who would not compromise public and scholarly interests in preservation and access to documents in order to curry favor with a particular Administration.

This last point leads to the third consideration underlying my support of Agresto's nomination. I believe he has a conception of the job of Archivist that bodes well for his tenure in it. As I understand it, he is determined to increase the visibility of the National Archives and the use of its materials by scholars and the public. In a recent speech to a New York State Archives conference, he spoke eloquently on the importance of documentary preservation and widespread public access for the health of our democratic system. He elevated the discussion of archival matters from narrow, albeit important, technical considerations to fundamental values of the American polity. He can and certainly will hire the technical expertise he needs to make decisions on complicated questions that come before him. But his vision of the place of the National Archives in the larger scheme of things offers an exciting future for the Archives that might not have occurred to a career archivist.

Let me conclude by underscoring the importance of one aspect of Agresto's conception of the job of Archivist. The American Political Science Association has a long history of efforts to enhance access to presidential papers. Over a decade ago we worked with the American Historical Association to enjoin President Nixon from taking private possession of his presidential papers and tapes. I played a small role in our Association's decision to become a litigant in that case; since then, I have maintained an active interest in achieving public and scholarly access to the Nixon materials. In my view, the legal opinion issued by Assistant Attorney General Charles Cooper that sitting presidents should honor claims of executive privilege made by their predecessors "without judging the validity of the claim" clearly violates the intent of Congress in passing the Presidential Records Act. The decision of the Acting Archivist to abide by that opinion raises serious questions about the independence of the National Archives and future access to presidential papers.

If I had any doubt about John Agresto's commitment to public access to presidential papers or his resolve in resisting Cooper's opinion, I could not support his nomination. But everything I have learned from his public statements and my private conversations with him lead me to believe he would fight to protect the interests of the public and of the scholarly community.

On these grounds, I support the nomination of John Agresto as Archivist of the United States.

THOMAS E. MANN

Since July 1981, Thomas E. Mann has been the executive director of the American Political Science Association. Prior to his current appointment, Mann was co-director of the Congress Project at the American Enterprise Institute and director of the APSA Congressional Fellowship Program. During the 1987-88 academic year, he will be a Fellow at the Center for Advanced Study in the Behavioral Sciences.

Born on September 10, 1944 in Milwaukee, he earned his B.A. in political science at the University of Florida and M.A. and Ph.D. at the University of Michigan. He first came to Washington in 1969 as a Congressional Fellow in the offices of Senator Philip A. Hart and Representative James G. O'Hara.

Mann has taught courses at Georgetown University, the University of Virginia, American University and Catholic University; conducted political polls for the Democratic Study Group Campaign Fund; served on the Democratic National Committee's Winograd and Hunt Commissions dealing with presidential selection; worked as a consultant to the Public Broadcasting Service; and served as an expert witness on redistricting cases in Alaska and New Jersey. He lectures frequently in the United States and abroad on various aspects of American politics.

Mann's published works include **Unsafe at Any Margin: Interpreting Congressional Elections**, **Vital Statistics on Congress**, **The New Congress**, and **The American Elections of 1982**; articles in the **American Political Science Review** and **Public Opinion**; and chapters in **The American Elections of 1980**, **Problems and Prospects of Presidential Leadership in the 1980s**, **Parliaments and Parliamentarians in Democratic Politics**, **The American Elections of 1984**, and **Before Nomination: Our Primary Problems**.

Mann resides with his wife Sheilah, and two children, Teddy and Stephanie, in Chevy Chase, Maryland.

August, 1986

American Historical Association

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STATEMENT OF MARY FRANCES BERRY

ON BEHALF OF

THE AMERICAN HISTORICAL ASSOCIATION

BEFORE THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

CONCERNING THE NOMINATION OF

JOHN AGRESTO

FOR THE POSITION OF

ARCHIVIST OF THE UNITED STATES

AUGUST 13, 1986

Mr. Chairman and Members of the Committee:

I am here on behalf of the American Historical Association, an organization of 12,000 educators and scholars from degree-granting colleges and universities in the United States, as well as scholarly historians. The AHA was organized in 1884 and incorporated by Congress in 1889. I served as Vice President of the AHA from 1980-1983.

In April of this year, the Executive Council of the AHA voted to oppose the nomination of John Agresto for the position of Archivist of the United States. Twelve other constituent user groups of the National Archives have taken similar positions opposing this nomination.

As a Constitutional historian and a lawyer, my purpose here today is twofold: (1) to review the purpose and intent of the Archives "independence" law and Dr. Agresto's credentials in comparison; and (2) to review Dr. Agresto's understanding of law and compliance with it during his tenure as Acting Chairman of the National Endowment for the Humanities. I have a long record of work and interest in civil rights, and I have followed Dr. Agresto's career with great interest. As an historian, I believe he is completely unqualified for the position of Archivist in terms of the professional qualifications called for in the Act, and as a civil rights advocate, I and many others would find his confirmation repugnant to the goal of providing equal opportunity for those who have been long excluded in our society. Many of us view this nomination as the culmination of a long process--specifically the final and perhaps most important step of the National Archives independence movement.

The American Historical Association has long been in the forefront of the movement to restore independent agency status to the National Archives. In 1984, with the enactment of P.L. 98-497, the shot-gun marriage of the Nation's record keeper and guardian of history to the Nation's guardian of storehouses, workrooms, and washrooms, the GSA, was ended. It had been a long and miserable marriage. The Archives had been subjected to repeated forays by politically appointed GSA Administrators into ill-conceived projects with disastrous implications for this nation's Federal government records.

The most serious and blatant mistreatment of government records and politicization of the Office of the Archivist goes back to the infamous Nixon-Sampson agreement. This deal was struck just before his resignation between President Nixon and his political appointee, GSA Administrator Arthur Sampson, without the knowledge or participation of the Archivist.

The agreement guaranteed to former President Nixon exclusive control over access to his Presidential records and White House tapes, numbering 42 million pages and 950 tapes, respectively. The agreement has also permitted destruction of the tapes at Mr. Nixon's request.

As a direct result of the Nixon-Sampson agreement, the Congress passed the Presidential Recordings and Materials Act of 1974 to gain custody of Mr. Nixon's Presidential materials and to invalidate the agreement with the GSA Administrator. Subsequently, after four years of experience with litigation by Mr. Nixon over public access to the records of his Presidency, the Congress enacted the Presidential Records Act of 1978, making the papers of future Presidents public documents and setting ground rules for their archival screening, treatment, and public availability. President Reagan's Presidential materials will be the first records subject to this Act.

Inherent in both these acts was the assumption of an impartial, non-partisan, and thoroughly professional Archivist of the United States. Wide discretionary powers were given to the Archivist in determining when to open records, when to uphold claims of executive privilege, when to uphold claims of violation of privacy and other individual rights, and when to authorize destruction. These assumptions of thorough professionalism and non-partisanship were subsequently written into the Archives Independence Act. Nonetheless, the saga of the Nixon-Sampson agreement and those terrible dark days of national disgrace continue to this day.

This Committee has recently had before it for review the sixth set of regulations proposed by the Archives to provide public access to the records of the Nixon Presidency. Hope had grown that these regulations, some 13 years and numerous lawsuits after the end of the Nixon Administration, would finally take effect. But those hopes were dashed with the last minute surprise appearance on the scene of an "interpretive memorandum" from the Office of Legal Counsel of the Department of Justice. That opinion says, in effect, that the Archivist would no longer play a role in making determinations on claims of executive privilege and _must_ uphold any claim of a former President. The legal reasoning in this opinion has been criticized at length and is now the subject of a court suit. Nonetheless, what we now have is an opinion which, if left standing, would close forever any records that former President Nixon or President Reagan once leaving office deemed unsuitable for release.

The opinion could not have done a better job than Mr. Nixon's lawyers in guaranteeing the exclusive final say over access to his Presidential materials to Mr. Nixon, or perhaps more importantly, to those of any current and future Presidents upon leaving office. The opinion, as Senators Mathias and Eagleton stated to their House colleagues also reviewing the regulations, contradicted the plain language of the regulations themselves, and the clear Congressional intent of the Presidential Recordings and Materials Preservation Act as well as the Archives "independence" law.

One has to marvel at the coincidence of timing. The White House waited a year and a half after knowing the position of Archivist was to be vacant to forward a name to the Senate--a name never included on any list of nominees suggested by professional organizations. Almost simultaneously, an ill reasoned and far fetched opinion removing most discretionary authority was promulgated. An opinion such as this would no doubt best be carried out by an Archivist without professional stature, and nominated without any professional and user group support, and thus answerable only to the Justice lawyers.

It is precisely this type of politicization which the Archives independence law sought to end. That law purposely and carefully designated the position of Archivist as a non-partisan, professional one appointed by the President by and with the advice and consent of the Senate. With no fixed term of office, the appointment was to be one of extraordinary stature. In many ways, the appointment is akin to an appointment to the Federal bench where the candidate's credentials, views of the law, past decisions, and judicial temperament are reviewed. Such appointments also call for a rating by the professionals. The groups which have opposed Dr. Agresto represent all major professional and user groups associated with the Archives. We have done so, and we find him unqualified.

So it is that statutory mandate which brings us here today to learn about the nominee for the position of guardian of our nation's most important records of enduring value--our nation's institutional memory.

Shortly after the Archives independence law took effect, the user community of the National Archives--those government records managers, Federal historians, scholars, genealogists, state and local archivists, academics, and librarians--began thinking about those qualities most important for an Archivist of the United States to lead this infant agency into the 21st century.

After a number of drafts and discussions, it was concluded that six principal criteria were needed in such a person.

I will not go through these criteria in detail, as another witness plans to do so. Let me just say that Dr. Agresto is simply not qualified for the position as envisioned in the legislation. In scholarly activities, the possession of a Ph.D. does not qualify one for anything other than a beginning teaching job. Several thousand Ph.D.'s are graduated each year. The degree is simply a ticket to compete in the academic profession. It is the writings, research, professional contributions, and work experiences taken together which qualify one for higher positions. Dr. Agresto's record does not merit this appointment.

The user community communicated these criteria repeatedly. We shared them with the Senate sponsors of the Archives independence legislation, Senators Eagleton and Mathias, and we attempted to share them with the White House. While the Senators quickly took under consideration our six criteria, it was a much more difficult task making our views known to the White House. We were encouraged when Senators Eagleton and Mathias, in a letter dated November 29, 1984, wrote to the President urging him to consult with our groups to arrive at a consensus candidate. But the call never came.

Numerous efforts were made, by phone, by letter, and in meetings to discuss the criteria with those making the selection for the nomination, to urge discussions with user groups. Several lists of names were provided, none of which contained Dr. Agresto's name. We have detailed documentation of all these efforts and it is attached as a supplement to my testimony, but I will not take the time here to recount them in detail. The issue is discussed, however, because it reveals the lack of understanding on the part of the White House of what this position requires. This is not a "plum" position to reward a team player for this or any other administration. Nor is it a short-term appointment. With no fixed term of office, the Congress fully intended that the Archivist serve in a lifetime appointment insulated from political interference from each branch of government, and that the position would not turn over with a change in administration.

But listen to what the White House was writing to people who attempted to inform them about the requirements of the position and to suggest candidates. I quote from Mr. Tuttle's letter of May 16, 1986:

> Please be assured that we are doing everything possible to see that only the most highly qualified men and women who reflect and support the President's policies are appointed to positions of public trust in the Reagan Administration.

Let us now turn to the qualifications of the nominee placed before this Committee for its advice and consent. Dr. Agresto came to Washington in 1981 with William Bennett, who was appointed Chairman of the National Endowment for the Humanities. Dr. Agresto had been associated with Dr. Bennett for three years at the National Humanities Center in North Carolina prior to coming to Washington. At NEH Dr. Agresto was a political appointee filling the position of Assistant Chairman of the Endowment. When Dr. Bennett was chosen to head the Department of Education in February of 1985, and the actual Deputy left at about the same time, Dr. Agresto became both "Acting Chairman" and "Deputy Chairman." Strangely, Dr. Agresto was not nominated to fill the position of NEH Chairman. Instead Edward Curran was nominated.

While Mr. Curran's nomination was pending before the Senate Labor Committee, Dr. Agresto took it upon himself to interject himself into the Committee's deliberations. Dr. Agresto wrote on NEH letterhead dated October 1, 1985, to each member of the Senate Labor and Human Resources Committee berating one of the witness organizations opposed to Mr. Curran's nomination, and, in a curious turn of logic, himself attempted to pressure Committee members to support Mr. Curran's nomination.

Now, why would someone in an Acting position believe it appropriate to try and influence Senators using the name of the Endowment for the Humanities and representing that he spoke for the agency? Despite this entreaty to the Congress, Mr. Curran's nomination was rejected by the Committee.

Will members of Congress continue to hear from Dr. Agresto on his personal views of who knows what in his capacity as Archivist of the United States? Is that the behavior Congress intended or expects from the head of this independent agency?

In addition to Dr. Agresto's lack of qualifications, his inability to distinguish his personal views from the requirements of the law or appropriate behavior for the head of an executive branch agency are what trouble me as an attorney and as a member of the U.S. Commission on Civil Rights. On July 25, 1984, I testified before the House Government Operations Subcommittee on Governmental Activities and Transportation concerning the refusal by the NEH Chairman to submit affirmative action goals and timetables for hiring and promotions at NEH to the Equal Employment Opportunity Commission. In his role as Assistant Chairman to Bill Bennett, Dr. Agresto participated in Bennett's decision to flout the requirements of the law. NEH was one of three agencies out of 110 which refused to comply with the EEOC Management Directive on this matter. In its Sixth Report to the House, the Government Operations Committee affirmed that EEOC directives are binding on other Federal agencies and suggested several remedies to the situation, including legislation which was subsequently introduced.

Undaunted by this expression of Congressional concern, Dr. Agresto continued to refuse to submit affirmative action goals and timetables to the EEOC in 1985 when he served as Acting Chairman of NEH. Indeed, he made such a major issue out of his stand, that the House Subcommittee on Employment Opportunities held another hearing on Dr. Agresto's continued resistance to the law on July 23, 1985. During that hearing, Dr. Agresto made a promise he did not keep. Listen to this exchange between the Chairman of the House Committee on Education and Labor, Rep. Gus Hawkins, and Dr. Agresto:

> Mr. Hawkins: Then let me ask the gentleman representing the National Endowment, who seems to state in a very beautiful way his principle about a colorblind society. If you found that your principle was in conflict with the law, would you pursue your principle or would you uphold the law? Which would you do?
>
> Mr. Agresto: If I were told that I must, as the head of an agency, supply goals and timetables as a matter of law, I would resign my position as the head of that agency, for I would not put myself in a position of discriminating on the basis of race or sex.

Well, Dr. Agresto did not resign as Acting Chairman. But members of both the House and Senate authorizing committees were so disturbed by his blatant disregard for the law that they wrote the requirement to submit goals and timetables into the NEH authorization. Even then, Dr. Agresto did not give up. Faced with a statutory directive, he submitted an EEO plan, kicking and screaming all the way.

On January 22 of this year, Acting NEH Chairman John Agresto held a press conference, complete with an NEH "Media Advisory" and a printed statement, saying he was submitting to EEOC goals and timetables, but that it was under duress. Listen to what this nominee for Archivist had to say about complying with the law on affirmative action:

> We will abide by the law because we must. But faithfulness to the principle that no one should be judged on the basis of race or sex compels us to say that we view this occurrence as nothing short of tragic.

Dr. Agresto apparently does not understand that affirmative action goals and timetables do not require judging anyone on the basis of race or sex, but that qualified people who were overlooked in the past not be excluded on the basis of race or sex. But, "Nothing short of tragic." That is how Dr. Agresto viewed his oath of office to faithfully execute the laws of the United States.

Members of the Committee on Governmental Affairs must ask themselves whether this candidate fully understands the obligations of an oath of office; whether he is able to distinguish his personal views from the requirements of the law; and whether he knows where to turn for a final decision if he has doubts about the obligations of the law. Will Dr. Agresto threaten to resign as Archivist if he encounters a statutory requirement with which he personally disagrees? Or will he just flout the law? This is an extremely important matter for an appointment, which could be for a lifetime, which involves daily decisions concerning declassifications of sensitive records of government, timing of public access to documents, privacy, national security, the public's right to know, and records of former Presidents, including former President Nixon and President Reagan. Dr. Agresto has demonstrated during his tenure at NEH that he lacks the most basic ability required of the head of an agency--the ability to distinguish law from personal views.

More troubling is Dr. Agresto's apparent need to shop around for someone or some agency's viewpoint which will support his own preconceived notions. He relied on an internal Justice Department memorandum to support his case on affirmative action. But in the case of the Nixon papers public access regulations, he has stated that he will ignore the Justice Department's interpretive memorandum of those regulations. As a constitutional historian and lawyer, I find this flexibility toward laws and OLC opinions very curious. You cannot have it both ways. If ours is a nation of laws, and not of men, we must have absolute confidence in those entrusted with carrying out those laws. Dr. Agresto fails to instill such confidence.

The subject of affirmative action hiring and promotions is no minor matter for the more than 3,000 employees of the National Archives and Records Administration. Only 7.2 percent of Archives professional positions are held by minorities. The national average, according to the Census workforce data, is 12.5 percent. Yet when one looks at the Technical and Clerical positions, minority employment exceeds the national average by more than 50 percent. Clerical intermittent positions in the regional records centers are held by minorities well over the 41 percent national average. What this means is that minority employees of the National Archives may be held back by lack of affirmative action measures to move up the career ladder. Dr. Agresto is not concerned, apparently, by this long-standing personnel problem. He has demonstrated his repugnance for legally required affirmative action measures at NEH. There is no reason to expect that his views will change.

Dr. Agresto's facile alternative to affirmative action goals and timetables is to "cast a wide net in recruiting." Well, that is a fine ideal and should be part of any affirmative action plan. However, the National Archives has been under a hiring freeze for more than a year, thanks to the Gramm-Rudman-Hollings law. In addition, recruitment is not going to do a thing for the many minority employees of the Archives who occupy the bottom of the career ladder and are not moving up.

The National Archives and Records Administration has been without a permanent Archivist since April, 1985. The dedicated employees there deserve direction by a leader who understands and cares about their needs. Dr. Agresto has shown that he cares little for the lot of the career civil servant and has an outright hostility toward the one Federal program--affirmative action--which held out some hope for upward mobility for minority career civil servants.

Dr. Agresto should not be confirmed as Archivist of the United States. He does not possess the required experience as a scholar, researcher, and administrator. He has demonstrated a disregard for the law in order to accommodate his personally held views. He has failed to acknowledge the role of the courts in settling questions of law. He has strongly held, hostile views toward long-standing affirmative action requirements and programs of the Federal government. He is the antithesis of the type of non-partisan professional leader of national stature whom Congress intended to head this independent agency and lead it into the 21st century.

ATTACHMENTS TO

TESTIMONY OF

MARY FRANCES BERRY

ON BEHALF OF

AMERICAN HISTORICAL ASSOCIATION

WILLIAM V. ROTH, JR., DEL., CHAIRMAN

CHARLES H. PERCY, ILL.
TED STEVENS, ALASKA
CHARLES McC. MATHIAS, JR., MD.
WILLIAM S. COHEN, MAINE
DAVID DURENBERGER, MINN.
WARREN B. RUDMAN, N.H.
JOHN C. DANFORTH, MO.
THAD COCHRAN, MISS.
WILLIAM L. ARMSTRONG, COLO.

THOMAS F. EAGLETON, MO.
LAWTON CHILES, FLA.
SAM NUNN, GA.
JOHN GLENN, OHIO
JIM SASSER, TENN.
CARL LEVIN, MICH.
JEFF BINGAMAN, N. MEX.
DAVID PRYOR, ARK.

JOHN M. DUNCAN, STAFF DIRECTOR
IRA S. SHAPIRO, MINORITY STAFF
DIRECTOR AND CHIEF COUNSEL

[illegible]
CHARLES McC. MATHIAS, JR., MD., CHAIRMAN

WARREN B. RUDMAN, N.H.
THAD COCHRAN, MISS.

THOMAS F. EAGLETON, MO.
LAWTON CHILES, FLA.

WILLIAM C. LEONARD
STAFF DIRECTOR

EILEEN C. MAYER
CHIEF COUNSEL

United States Senate

COMMITTEE ON
GOVERNMENTAL AFFAIRS
SUBCOMMITTEE ON
GOVERNMENTAL EFFICIENCY AND THE DISTRICT
OF COLUMBIA
WASHINGTON, D.C. 20510

November 29, 1984

The President
The White House
Washington, D.C.

Dear Mr. President:

As sponsors of the National Archives and Records Administration Act, we are glad that you saw fit to approve the legislation.

You share our commitment to the selection of the best qualified candidate to lead the new National Archives. Such a candidate selection process should be carefully thought out in consultation with the professional membership and user-groups of the Archives. By early consultation with those most directly affected by the programs of the Archives, a consensus can be developed for the criteria for selection and for the ultimate nominee. We ask that you engage in such a process prior to submitting a nominee's name to the Senate Committee on Governmental Affairs.

With best wishes,

Sincerely,

Tom Eagleton
Thomas F. Eagleton
United States Senator

Charles McC. Mathias, Jr.
United States Senator

CM/mtm/ab

LEG/Gov.Aff./ Archivist -- PL 98-497

#43

March 5, 1985

The Honorable Max L. Friedersdorf
Assistant to the President and
Legislative Strategy Coordinator
Office of the White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. Friedersdorf:

On November 29 of last year, Senator Eagleton and I wrote to the President urging an early consultation with the professional membership and user groups of the National Archives with respect to the selection of a nominee for Archivist of the U.S. pursuant to P.L. 98-497.

Although our letter was acknowledged on January 7, the principal constituency groups have not, as yet, been contacted by the White House either formally or informally.

As you may know, one of the principal motivating reasons for the reestablishment of an independent Archives and Records Administration was to assure nonpartisan professional decision-making with respect to the records of our government of permanent historic value. The user groups of the Archives who have given long and thoughtful consideration to this matter are a resource which remains untapped.

The current Archivist, Dr. Robert Warner, has announced his resignation effective April 1.

This reorganized agency deserves to get off on the right foot quickly with a permanent appointee

Would you look into the status of this matter and let me know what the intentions of the White House are?

Thank you for your attention to this matter.

With best wishes,

Sincerely,

Charles McC. Mathias, Jr.
United States Senator

CM:mtm:sm

THE WHITE HOUSE
WASHINGTON

June 24, 1985

Dear Ms. Hinding:

On behalf of President Reagan, thank you for your recent letter recommending Charles Blitzer.

The information you provided will be fully considered as we select individuals for positions in the Reagan Administration.

However, I feel it only fair to advise you that the President has made a tentative selection for the position of Archivist of the United States. We anticipate an announcement in the near future and hope that the President's candidate will enjoy the support of your organization.

We greatly appreciate your recommendation of qualified persons to serve President Reagan.

Sincerely,

Bob Tuttle

Robert H. Tuttle
Director of Presidential Personnel

Ms. Andrea Hinding
The Society of American Archivists
600 South Federal, Suite 504
Chicago, IL 60605

THE WHITE HOUSE
WASHINGTON

May 16, 1986

Dear Mr. Baker:

Thank you for your recent letter to President Reagan and for making known your concerns regarding the appointment of John Thomas Agresto.

Please be assured that we are doing everything possible to see that only the most highly qualified men and women who reflect and support the President's policies are appointed to positions of public trust in the Reagan Administration.

Your support for the President and his policies is very much appreciated.

Sincerely,

Bob Tuttle

Robert H. Tuttle
Director of Presidential Personnel

Mr. Richard A Baker
Box 14139 Benjamin Franklin Station
Washington, DC 20044

NATIONAL ENDOWMENT FOR THE HUMANITIES

WASHINGTON, D.C. 20506

October 1, 1985

The Honorable
United States Senate
Washington, D.C. 20510

Dear Senator :

The enclosed letter from the Modern Language Association to some of its members was brought to my attention today. This agency hopes that the fate of its future chairman will be decided by deliberation and honest, open inquiry. Mr. Curran himself would want it no other way. But this mass mailing urging a demonstration campaign, a campaign to put pressure on the committee by assembling a "large crowd" is antithetical, in my mind, to the seriousness of the task at hand.

I thought this attempt at pressuring the committee should be known to you. Mr. Curran could pack the hall with vocal supporters, too, but he recognizes, as do we, that this kind of pressure is foreign to the deliberation and careful consideration that this position deserves.

You know that I think Mr. Curran is absolutely worthy of the office for which he was nominated, but I would be embarrassed to mount on his behalf the kind of direct pressure campaign implied by this circular.

Sincerely,

John Agresto

John Agresto
Acting Chairman

cc: Phyllis Franklin

MARY FRANCES BERRY

Mary Frances Berry is Professor of History and Law at Howard University in Washington, D.C. Since 1980, she has served as a Commissioner on the U.S. Commission on Civil Rights. In 1983, when President Reagan fired her and other Commissioners who were outspoken critics of the Administration's civil rights policies, she was reinstated by a Federal District Court, affirming the independence of the Commission from presidential control. Subsequently she was reappointed by the Congress to the reconstituted Commission. Dr. Berry is also one of the leaders of the Free South Africa Movement.

Dr. Berry was formerly U.S. Assistant Secretary for Education in the Department of Health, Education, and Welfare (HEW), 1977-January, 1980. As Assistant Secretary, Dr. Berry coordinated and gave general supervision to nearly thirteen billion dollars of Federal education programs.

Prior to her service at HEW, Dr. Berry was Provost of the Division of Behavioral and Social Sciences at the University of Maryland, College Park, and then Chancellor of the University of Colorado at Boulder.

Dr. Berry was born in Nashville, Tennessee, where she attended public schools. She earned a bachelor's and a master's degree at Howard University, a doctorate in History from the University of Michigan, and the juris doctor degree from the University of Michigan Law School.

She has received numerous (15 to date) honorary doctoral degrees and several awards for her public service and scholarly activities, including the NAACP's Roy Wilkins Award and Image Award, and the Rosa Parks Award of the Southern Christian Leadership Conference.

Dr. Berry has held faculty appointments at Central Michigan University, Eastern Michigan University, the University of Michigan, the University of Maryland, College Park, and the University of Colorado at Boulder. She is also a member of the District of Columbia Bar.

Dr. Berry's scholarly publications in constitutional history and civil rights law include five books: *Black Resistance/White Law: A History of Constitutional Racism in America*; *Military Necessity and Civil Rights Policy: Black Citizenship and the Constitution, 1861-1868*; *Stability, Security, and Continuity: Mr. Justice Burton and Decision-Making in the Supreme Court, 1945-1958*; *Long Memory: The Black Experience in America (co-author, John W. Blassingame)*; *Why ERA Failed: Politics, Women's Rights, and the Amending Process of the Constitution*; and a number of articles and essays.

WASHINGTON BUREAU
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
1025 VERMONT AVENUE, N.W. • SUITE 820 • WASHINGTON, D.C. 20005
(202) 638-2269

CORRECTED

TESTIMONY

OF

ALTHEA T. L. SIMMONS

DIRECTOR, WASHINGTON BUREAU

OF THE

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

BEFORE

THE

SENATE GOVERNMENTAL AFFAIRS COMMITTEE

ON THE

NOMINATION OF

JOHN AGRESTO

FOR

ARCHIVIST

August 13, 1986

Mr. Chairman, and members of the Committee, I am Althea T, L. Simmons, Director of the Washington Bureau of the National Association for the Advancement of Colored People. I am appearing on behalf of the NAACP's one-half million members in our 2100 branches in the 50 states and the District of Columbia in opposition to the nomination of John Agresto as Chairman of the National Endowment for the Humanities.

At the outset, Mr. Chairman, I should state that the NAACP is a strong supporter of affirmative action. The NAACP believes that, in America, one does not have the option of deciding which laws one should or should not obey. We believe that laws are necessary roadmaps for a civilized society. We believe that you comply with the laws of the land, even when you aggressively seek to change them. That, to us, is the essence of democracy.

Our opposition to Mr. Agresto is based on his stance on the use of affirmative action and the blatant disregard of the laws and statements made by the nominee, as late as January 22, 1986:

> "We will abide by the law because we must, But faithfulness to the principle that no one should be judged on the basis of race or sex compels us to say that we view this occurrence as nothing short of tragic."

Affirmative action is necessary to erase the present effects of past discrimination. Policies of "non-discrimination" alone are insufficient to erase the incidence and depth of inequality. More than neutrality is needed to achieve parity. As blacks and others have been systematically excluded from the American mainstream because of color, their inclusion must likewise be deliberate, systematic, and race-conscious. No less is sufficient to overcome the residue of systemic institutional discrimination.

The constitionality of affirmative measures to recruit, employ and promote members of the protected class, is now well-settled. (See Regents of the University of California v. Bakke, United Steel Workers of America v. Weber, Fullilove v. Klutznick and Wygant v. Jackson Board of Education). Despite the High Court's clear and consistent holding that affirmative action plans which take race into account and impose numerical goals and timetables do not offend the Constitution, there are those, including the nominee, who argue that the concept of affirmative action (to take into account "race" or "sex") is repugnant to the Constitution--a retreat from the constitutional mandate of equal protection. The NAACP submits that those who share such view fail to understand some basic concepts of equality which have long been a part of American philosophy.

The constituency we represent--persons who have been systematically denied equality of opportunity based on race--is hard put to find surcrease in a clever play on words, to wit, "blindness to a person's color or religion, gender or race was, we thought, the hallmark of civilized justice as embodied in this Republic." We disagree with the nominee because the harsh, grim and stark reality is that our Republic has been notably race conscious. Justice Blackmun recognized it and the propriety of proportional equality, when he opined, in the Bakke case:

> "In order to go beyond racism, we must first take account of race and in order to treat some persons equally, we must treat them differently." 438 U. S. at 407

In order to treat all persons equally, to provide genuine equality of opportunity, society must pay attention to those born into less favorable positions. The idea is to redress the bias contingencies in the direction of equality. Affirmative action requires no more than this. Until the bias contingencies are redressed in the direction of equality, i.e., until blacks and others who have been denied an equal opportunity to compete for this country's employment and educational opportunities, are fully integrated into the American labor force at all levels of employment--and in the nation's educational institutions, there is a need for affirmative action.

The civil right community finds the persistent "lip service" that an agency is "committed to the principle of color, religion and gender blindness" to be disgenuous at best, totally unrealistic at worst, in terms of understanding what the 14th Amendment to the Constitution is all about and, in terms of leveling the barriers of policies, practices and former laws that were undeniably color, religion and gender-conscious. To take it to the extreme of absurdity, it means to a deprived American that because of an accident of birth (where race is concerned) you fall into the category of persons who were disadvantaged by slavery which was legally institutionalized in this great country of ours; that now in 1986, it is impossible to make changes because it would disadvantage others who have been the beneficiaries , through the years, of a legally-sanctioned, race-conscious policy. The NAACP submits that such a position is legally impermissible and morally unworthy of our great nation.

Let me turn very specifically to the reasons why the NAACP opposes Mr. Agresto. Mr. Agresto, in a May 28, 1985 letter to Congresswoman Cardiss Collins stated:

> "...as you know, Dr. Bennett in his letter of January 16, 1984 to Clarence Thomas of the EEOC and in his subsequent testimony before your Committee [Government Activities and Transportation] strongly opposed the principle of setting racial goals for hiring. I endorse Dr. Bennett's position. It will remain NEH policy neither to favor nor slight any one because of race, color, national origin, religion or

gender. Since we refuse to judge people on the basis of sex or race. We will not establish 'goals and timetables'...nor do we think such 'goals and timetables' are warranted given NEH's admirable record in hiring and promoting minorities and women..."

"Just over one and one-half years ago, William Bennett, then Chairman of the Endowment, wrote a letter to Clarence Thomas, Chairman of the EEOC. (I submit a copy of that letter for the record.) The letter sets forth the reasons for NEH's declining to follow those sections of the EEOC directives that asked us to establish race-and gender-conscious goals and timetables for hiring and promotion. In that letter we said that we supported a policy of strict non-discrimination at the Endowment. Relying on the determination of the Justice Department that EEOC had exceeded its legal authority by seeking such information, we explained that this agency was committed to the principle of color, religious, and gender-blindness, and that special or differing treatment of individuals on the basis of characteris-tics such as their race was contrary to what we know to be the best principles of this nation.

In taking this position we did not deny the propriety of strong, extensive and thorough recruiting among all classes and races. We trust that our recruiting efforts can stand up to the closest scrutiny. Our objection was only on the narrower but crucial point--to set out sex-based, race-based goals or timetables for hiring, selection, promotion, or rejection. We will cast as wide a recruiting net as possible--no qualified person should be denied access to equal opportunity at the NEH; but we will not consider race or sex or color or religion to be reasonable criteria when it comes to hiring or promotion or dismissal.

"The National Council on the Humanities reinforced the decision of the Chairman by voting overwhelmingly on February 16, 1 984, that 'the National Endowment for the Humanities should neither favor nor slight anyone because of race, color, national origin , religion or gender.' This is the central philosophical core of our decision.

"Since our position is both legal and just, the committee can be assured that I will continue to adhere to it as long as I remain acting chairman of the agency."

The nominee again expressed his strong views about affirmative action in his January 22, 1986 statement submitted to EEOC Chairman, Clarence Thomas:

> "We will abide by the law because we must. But faithfulness to the principle that no one should be judged on the basis of race or sex compels us to say that we view this occurrence as nothing short of tragic [compliance with EEOC regulations]...Soon America must choose. We must either follow the great principle that race and sex are not factors in rewarding and punishing people in this country, that distinctions based on race are, as they have always been, odious to a free people--or we should state openly and candidly that we intend to perpetuate, encourage and promote distinctions based on gender and race."

Mr. Agresto went on to denote his dissatisfaction:

> "I have taken this issue to be sufficiently important for me to have stated that I would rather leave this office than sign my name to a document that commits this Endowment to judging our fellow citizens on the basis of their race... "

The nominee places great emphasis on "recruitment". Most of us here are consciously aware that recruitment alone will not solve the problem. There has been a conscious attempt over the past 5 years toward privatization and a freeze on hiring. These two efforts alone would limit the in flow of persons into the ranks of government or government-funded operations. More importantly, it would leave those persons already employed at status quo with little or nothing being done to improve their status by promotions.

The work force at NEH is small, roughly 257. The workforce at the National Archives is approximately 3505. This number includes 39 minority professionals, 47 minority administrative, 152 minority technicals for a total of 228 persons in presumably mid and upper levels. When you add the 1082 minority clericals you have a total of 1310 minorities at the

Archives. One might say that 1310 out of 3505 is laudable, however, when you note that more than 1,000 are in clerical positions it gives one pause. We do not have at our disposal a breakdown regarding the number of blacks included in these figures so we must assume that the all-inclusive term "minority" includes blacks, hispanics, Asians, etc. There is no evidence that there is a program to bridge employees from one level to another which could provide for upward mobility.

The NAACP is also aware that even in recruitment, where positions are available, black and other minorities are outside the "buddy system", "old boy network", "party favorites" and "ideology within the party favorites" categories which still account for a lion's share of the "goodies" in jobs.

Nominee Agresto seeks a life-time appointment and the public is entitled to know the beliefs of the nominee and whether or not the nominee will affirmatively comply with this nation's equal employment opportunity laws whether his personal convictions are in synch with them or not. The NAACP has grave doubts about the nominee and therefore urges a vote against his confirmation.

In conclusion, Mr. Chairman and members of the Committee, Mr. Agresto has very candidly stated for the record that he feel strongly about committing the Endowment:

> "...to judging our fellow citizens on the basis of race. I have been persuaded, however, that to walk away from this controversy [leave office] because of these compunctions would not only do damage to the Endowment but would deflect consideration away from the issue at hand and confuse a public wrong with a matter of personal conviction." [emphasis added]

The NAACP believes that the nominee, by his own admission, is adamantly opposed to affirmative action and would not be inclined to comply with equal employment opportunity laws or set a positive tone for such inclusion of minorities in the workforce during a lifetime appointment at the National Archives.

We urge the Committee to reject the nomiee for the position of Archivist for our National Archives.

Statement of Thomas J. Kemp at the Confirmation Hearings Of Dr. John Agresto as Archivist of the United States.

Mr. Chairman and the distinguished members of this Committee.

I come to you today to speak in support of the nomination of Dr. John Agresto as the next Archivist of the United States.

Dr. Agresto has the requisite experience and training for this position and most importantly has the spark of vision needed to creatively lead the National Archives into the future.

I have not come to this conclusion lightly. As a long term member of the American Historical Association, Organization of American Historians, Society of American Archivists, American Library Association and similar associations I became aware of the rising chorus of those who oppose this nomination and decided to investigate just why they were opposed to it.

It quickly became apparent to me that the basic objections were that, "it is feared he would politicize the Archives and because he is neither an archivist, historian, nor seasoned administrator." (Perspectives. American Historical Assn. Newsletter. 24(May-June 1986) p.9.

Some groups simply wanted their own candidate to be appointed. (see, OAH Newsletter 14 (May 1986) p.5).

I was appalled to find that the opposition to Dr. Agresto was based on rumor, innuendo and a total lack of objective investigation. Resolutions were passed by groups without ever contacting Dr. Agresto at all.

Knowing what his detractors had to say about him, I was anxious to learn from him what his goals and plans were for the Archives. I contacted his office and arranged for an appointment with him. Accompanying me were some 11 other librarians, archivists and genealogists from around the country. Active users of the central Archives and its branch facilities in their home areas.

We were anxious to ask him to respond to our questions, and that he did, for over an hour. The questions were frank, probing and insightful. We had come to objectively determine if this nominee would be a wise choice to lead the Archives. We found that he was a well rounded nominee of insight, new ideas and progressive goals for improving the overall service of the Archives. Dr. Agresto has clear goals to promote access to and use of the many collections by students, teachers, genealogists and the general public. He would clearly seek to raise the Archives in the public consciousness to the level of the Library of Congress and the Smithsonian Institution.

Dr. Agresto has a keen sense of the potential of the National Archives to illuminate and guide us in so many areas and disciplines. He wrote,

> "Getting beyond the numbers, we talk about the loss (of our books and documentary history) to all of us as scholars, as teachers, as parents, and as citizens. We are not above making utilitarian arguments. The loss of the past is irreplaceable; these documents help us understand the present and prepare us for the future; these records tell us about how our cities are built, how diseases spread, where the pipes are under ground. Diaries, journals, ledgers, maps, reports, deeds, blueprints--without the content of these vital records daily life is hurt in a thousand different practical ways. If we don't know the past we may have to repeat it." Agresto, John. Preserving Our Heritage p. 12.

One of the critical problems facing the new Archivist is that of preservation. Dr. Agresto has been working on this problem for years. Through his guidance as the Acting Chairman of the National Endowment for the Humanities he worked hard to fund preservation programs in institutions across the country. This is a critical task. Dr. Agresto's stated goal is to promote this preservation and at the same time promote access to the Archives. "In sum , we've been doing everything we can to support scholars and archivists and to let the public know that their (archival) memory really is at risk." (Agresto. Preservation... page 11).

Dr. Agresto further stated, "Perhaps the most distressing statistics I have read recently was published by the American Council on Education. They asked a wide ranging sample of colleges--2 year colleges, 4--year Bachelor degree institutions, and universities--how many can say that primary texts, as opposed to exerpts or textbooks, were used in their classrooms. The number was 27 percent. Only 27 percent. So we clearly have a set of obligations: to preserve our primary sources, our crumbling books, our historical records, and, second, to see to it that we invite people to use them." (Agresto. Preservation... p.9).

"When we preserve these documents we're doing more than a service to scholarship or to daily life. We're keeping alive the work our forebearers did. We call back to life their thoughts, their minds, their ideas, their hopes, their activities. We preserve more than 'history'. We preserve human efforts and triumphs and pains and successes." (Agresto. Preservation...Page 12).

What then of the 4 objections raised to his nomination. As to the first that he would "politicize the Archives" it is obvious conjecture that can be summarily dismissed without comment. As to the fourth that he is not a "seasoned administrator" his resume gives one a different conclusion and shows him to bring a fine record of achievement and diverse experience. Points two and three are virtually the same, that he is "neither an archivist (nor) historian." This is the most blatant of professional turf-guarding, discrimination and jealousy and forms the core of the opposition to Dr. Agresto.

The demand that the new Archivist come from only one narrow academic discipline is ill conceived. The records of the Archives are of use to geographers, political scientists, genealogists, librarians, historians, demographers, sociologists and so many others. Each discipline trains its adherents to revere, evaluate, interpret and utilize the records of the past.

Is one field better than another? The National Archives contains the collected papers of the government. The respective Presidential Libraries house the papers of the President. Who is better able to handle such an institution that holds the collective papers of the government, a nominee with a doctorate in history or one with a doctorate in political science? The answer should be obvious. They both come prepared.

When the current Librarian of Congress was nominated by President Carter he was attacked for not being a librarian. Did that make him less able to appreciate the Library of Congress or to lead it? Just as this argument was then recognized as pure professional turf-guarding and hypocrisy so too does this similar charge fall of its own wieght.

Mr. Chairman I would ask you and the esteemed members of this Committee to vote to confirm Dr. Agresto as the new Archivist of the United States and that you recommend this action to the entire body of the Senate.

Sincerely,

Thomas Jay Kemp

P.O.Box 4050
Stamford, Connecticut
06907-0050

Thomas J. Kemp
P.O. Box 4050
Stamford, Connecticut 06907

Home (203) 324-7746
Work (203) 964-1000

Professional Experience

Head Librarian. Turn of River Library, Stamford, Ct. 1982--present. Staff of 13 and 8 pages. Annual circulation of 280,000; an increase of 70,000 in 3 years. Strong record of programs and services to children and adults.

Head Librarian. Weed Memorial Library, Stamford, Ct. 1981--1982. Staff of 5 and 5 pages. Annual circulation of 86,000; an increase of 24,000 in one year. Active programs and public involvement.

Reference Librarian. Ferguson Library, Stamford, Ct. 1974--1981. Business and Adult reference services. Charge of Local History, Genealogy and Connecticut State Documents collections. Charge of 12 pages. Charge of services to Spanish-speaking.

Reference Librarian/Adjunct Professor. Sacred Heart University. 1980--1982, (evenings & weekends). Charge of the library evenings and weekends. Staff of 4. Responsible for Dialog on-line reference and ILL services.

Grant Reviewer. National Endowment for the Humanities. 1978--present. Responsible for thorough evaluation and critical review of grant proposals from libraries in the public and private sectors.

Education

Dialog, SDC and BRS. 1980--present. More than 15 courses in on-line data base information retrieval from the 3 main on-line services.
Columbia University. 1980--1981. Post-graduate seminars, courses.
Rochester Institute of Technology. 1979. Certificate Program.
Harvard University. 1977. New England Family History Institute.
Brigham Young University. B.A. 1973; M.L.S. 1974.
  President, Student Body. School of Library Science. 1973-1974.
  Editor. GRADALIS Review. Student Journal. 1973-1974.
  Recipient, Hattie M. Knight Award in Library Science, 1974.
Stamford High School, Stamford, Connecticut. Diploma, 1966.
Fluent in Spanish.

Publications

Genealogies in Connecticut Libraries and Historical Societies. t.b.p. Summer 1985. 1,200 pages.

Connecticut Researcher's Handbook. Detroit: Gale Research Inc., 1981. 755 Pages. Most comprehensive bibliography on Connecticut.

Connecticut Periodical Index. Annual. Indexes the 125 magazines published in Connecticut.

Author of 3 other books and numerous articles.

Professional and Pulbic Service

American Library Association. Reference & Adult Services Division. Chair, Nominations Committee 1984--1985; Chair, Program Committee 1982; Pre-Conference Planning Committee 1981; Genealogy Committee 1978--1982.

Connecticut League of Historical Societies. Award of Merit, 1983.
U.S. Naval Reserve. 1965--1971.
Membership in numerous professional associations.

Letter from Thomas Kemp, Dir.
Turn of the River Library,
Stamford, Connecticut

urgent! please call

21 July 1986 Sen Eagleton TODAY!

Dear Colleague,

As you know Dr. John Agresto has been nominated as the next Archivist of the United States. Since we will have to work so closely with him I went to Washington, D.C. last week to visit with him and to learn about his goals and plans for the Archives. Accompanying me were 11 other archivists, librarians and genealogists.

I found Dr. Agresto to be a man of vision and enthusiasm for the National Archives. Clearly he has plans to enhance and dynamically improve access, preservation and use of the Archives. Particularly he discussed indexing collections and providing more resources to the Branches. This would be a great service to the many genealogists using the National Archives.

I urge you to write immediately to the members of the U.S. Senate Governmental Affairs Committee which will be holding his confirmation hearings within the next few weeks. Urge them to endorse and approve this nomination. If possible arrange for your local association or society to pass a formal resolution endorsing his nomination.

We urgently need an Archivist who is pro-Archives and Pro-Genealogy. Dr. John Agresto is our man. Please send your letters in NOW before this opportunity passes us by.

Sincerely,

Tom

Thomas J. Kemp

P.O.Box 4050
Stamford, Conn. 06907-0050

(Dr.Agresto: Acting Chairman of National Endowment for the Humanities, 1985-1986; currently Deputy Chairman, NEH; numerous publications etc.) Assistant Chairman since 1982. I have a more complete bio. if you want.

Governmental Affairs

(Suite SD-342, phone 44751, meets first Thursday of each month.)

William V. Roth, Jr., of Delaware.
Ted Stevens, of Alaska.
Charles McC. Mathias, Jr., of Maryland.
William S. Cohen, of Maine.
David Durenberger, of Minnesota.
Warren B. Rudman, of New Hampshire.
Thad Cochran, of Mississippi.

Thomas F. Eagleton, of Missouri.
Lawton Chiles, of Florida.
Sam Nunn, of Georgia.
John Glenn, of Ohio.
Carl Levin, of Michigan.
Albert A. Gore, Jr., of Tennessee.

✓ ✓

urgent, that you call

In his office at Stamford's Turn of River library, Tom Kemp of Stamford pursues his extensive research into Connecticut genealogy.

LOOKING FOR A POPULAR SPEAKER?

If you are looking for an energetic, enthusiastic speaker for your genealogical program please contact Thomas J. Kemp. He is the Head Librarian of the Turn of River Library in Stamford, Connecticut and is the author of several books, among them are the Connecticut Researcher's Handbook and the Connecticut Periodical Index. A well known librarian and genealogist he has lectured across the country for the past 20 years and is listed in Who's Who In Genealogy & Heraldry, Who's Who in the East and Contemporary Authors.

Mr. Kemp is prepared to lecture, teach seminars, lead tours and conduct workshops anywhere your group would like to meet. All who have heard him have been informed, entertained and thoroughly enjoyed his lectures.

Write, P.O.Box 4050, Stamford, Conn. 06907-0050.

HOME STUDY COURSES OF INTEREST TO GENEALOGISTS & LOCAL HISTORIANS. by Thomas J. Kemp. Stamford, Ct.: Author, P.O.Box 4050, 06907-0050. 25p. $4.75 + $1.00, handling. Prepaid orders only.

This essential guide should be put in the hands of every genealogist and local historian. It lists more than 100 courses of interest to them from colleges and schools across the U.S. and Canada. It is arranged by topic and includes courses for beginning and advanced researchers. Among the topics included are, biography, cemeteries, legal records, indexing, land records, library-historical society-or museum management, U.S.-British-Irish-Scottish-Scandinavian-Continental-or Mexican genealogical research, paleography and history courses for the various States and Provinces.

This guide makes it easy for the typical researcher and librarian to be better informed.

A must purchase, that will be in the core collections of most public and personal libraries. Buy it! And then use it!

Letter to Thomas Kemp from Federation of Geneological Societies

Federation of Genealogical Societies

P.O. Box 220
Davenport, Iowa 52805

August 26, 1986

Mr. Thomas J. Kemp
P.O. Box 4050
Stamford, CT 06907-0050

Dear Tom:

I received a copy of your "Dear Colleague" letter of July 21, 1986, urging individuals to write to the U.S. Senate Governmental Affairs Committee to endorse the nomination of John Agresto as the next Archivist of the United States. His nomination is being opposed, and for good cause, by the following organizations:

American Association for State and Local History
American Historical Association
American Library Association
American Military Institute
American Studies Association
Federation of Genealogical Societies
Mid-Atlantic Regional Archives Conference
Midwest Archives Conference
National Association of Government Archives & Records Managers
National Coordinating Committee for the Promotion of History
National Council on Public History
Organization of American Historians
Society for History in the Federal Government
Society of American Archivists

These organizations are convinced that he is NOT the man to be the first U.S. Archivist since the independence of the Archives for many reasons and I will mention a few:

1. Need for a seasoned non partisan professional - Mr. Agresto is a protege of William Bennett and is clearly a very political candidate. We fought too long for the independence of NARA from the General Services Administration to give it back to the incumbent administration on a silver platter.
2. Appointment should be made... solely on the basis of professional qualifications - Mr. Agresto has no perceptive background in records management or archives administration. In other words he lacks the proper background and training.
3. Sufficient stature to work with heads of agencies and Congress - He is not a seasoned administrator and has never managed an organization the size of the National Archives. In addition he has shown negative attitudes toward compliance with mandated E.E.O. guidelines.

4. Assuring continuity of leadership - The selection of this politically motivated individual will most likely destroy the concept that "the office ought not to change hands automatically with the election of a new President."

In addition the MARAC membership empowered a committee to visit Mr. Agresto to ascertain his views. They were dissatisfied and voted to oppose his nomination. I urge you to reconsider your stand for the good of the nation as well as for fellow genealogists, archivists, and librarians.

On another note, the concerned individual who sent me your letter enclosed a flyer for one of your publications and another flyer with a picture of you in Stamford's Turn of the River Library offering your lecture services. Does this also imply an endorsement by the board of Stamford's Turn of the River Library?

I will be happy to supply you with more facts and back up material if you so desire.

Sincerely,

Arthur F. Sniffin
Immediate Past President-FGS

4 Farmington Court
Huntington Station, NY 11746

STATEMENT

of

SENATOR ORRIN HATCH

COMMITTEE ON GOVERNMENTAL AFFAIRS

CONFIRMATION HEARING

for

Dr. JOHN AGRESTO

NOMINEE FOR ARCHIVIST OF THE UNITED STATES

****

Mr. Chairman and Distinguished Colleagues:

As Chairman of the Senate Labor and Human Resources Committee, which oversees the National Endowment for the Humanities, I have known John Agresto for more than four years, ever since he came to Washington with the current Secretary of Education, William Bennett, to help head the NEH. John came to one of this nation's major cultural institutions and made it work -- made it work for scholarship, for teaching, for learning, and made it work for the public.

Let me cite some highlights of his work at NEH. These highlights also illustrate his undoubted qualification to serve as this nation's Archivist.

Under John's direction and administration, the NEH has taken the lead in the scholarly and public commemoration of the Bicentennial of the Constitution. Major series in documentary editions, for example, The Farrand Records of the Federal Convention and Leonard Levy's great Encyclopedia of the Constitution, were aided and supported through the Bicentennial Program he helped establish. There have been public programs in all 50 states and major TV documentaries produced for this program. He was able to do this so well because his academic training has given him a firm, scholarly grasp of the Constitution and the principles of American society.

His respect for our heritage and traditions was exhibited in another important way. For John took the NEH squarely into the field of preserving our crumbling paper heritage by promoting the new Office of Preservation at NEH.

In addition, under his leadership the Endowment began two major initiatives that will improve scholarship and enhance our cultural perspectives for years to come. Senator Simon and I endorsed "Understanding America" at a press conference with Dr. Agresto. That program will bring the history of this country more centrally into the classroom, and even living rooms, of all Americans. And, as national attention to learning foreign languages has been declining over the years, Agresto has worked to begin another new Endowment program called "Understanding Other Nations." That initiative will bring foreign languages, especially critical modern foreign languages, back into our schools and colleges.

This record shows that Agresto is able not only to begin new endeavors, but also that he will work long and hard to help restore traditional humanities studies to schools and for public audiences nationwide.

Lastly, I think it is important to note that John's writings on the values of liberal education are absolutely first rate. I commend them to every member of this committee.

At this particular time in the history of the Archives, what is most needed is a scholar, a scholar of American law and history, and a scholar of the Constitution. The Archives also needs a good and fair-minded administrator and a sensitive educator. It also needs a person who has the respect of members of Congress, a person who has respect for members of Congress, a person whose work and scholarship and administration know no partisan bonds. I firmly believe John Agresto is preeminently that person. I commend his nomination to you.

TESTIMONY OF

FRANCES DODSON RHOME
Director
Institute for Humanities Research
Indiana-Purdue University
Bloomington, Indiana

CONFIRMATION HEARING
of
John Agresto
Nominee, Archivist of the United States

Committee on Governmental Affairs
United States Senate
Washington, D.C.
August 13, 1986

I wish to endorse the candidacy of John Agresto for the position of Archivist of the United States, and I speak with full knowledge of his administrative qualifications.

I was appointed by President Carter in 1980 to the National Council on the Humanities. Because I have served with Mr. Agresto for the past five years, I have been privy to his performance as Deputy Director and Acting Director of the National Endowment for the Humanities. This period was one of upheaval with a change of administration and of uncertainty, a challenging time. Agresto's adaptability to diverse currents, unflappability to stress and turbulence, and affability under the most trying circumstances were notable. These virtues stem from his fine administrative sills, his perceptive goals, and his quick grasp of issues -- skills honed in his highly successful public career of service.

I found Agresto to be honest and open to criticism. His pursuit of policy and procedure, both as one carrying out another's programs and as one pursuing finally his own direction, is sure, steady, and objective. Because of his candor and sensitivity to others, he enjoys the support of a staff, also affected by administrative directions and "lame-duck" leadership. That he could maintain not only a directive course but also a creative initiative speaks eloquently to his prowess as a director and his wholesomeness as a person.

An astute scholar, Agresto will bring to the Archives an intelligent approach to processing, garnering, and preserving our nation's heritage. Surely his creative and academic instincts will lead to research programs, conferences, and forums which will benefit by access to archival documents, and will permit public educational programs.

No employee resume can list Mr. Agresto's major strength: that is, his ability to tackle controversial issues, to participate in vigorous debate, and to accept objective and critical opposition without rancor, defensive stance, or vengeful attitude. We have differed on issues, debated the opposing substances vigorously, but remained admiring and congenial co-workers. Such has been the general experience of numerous others.

I feel secure, in endorsing this nomination, that Mr. Agresto will perform the duties of Archivist with vigor, intelligence, honesty, and aplomb. He is qualified and "experience-ready" for this important task.

Thank you.

The Graduate School and University Center
of the City University of New York

Ph.D. Program in History / Box 505
Graduate Center: 33 West 42 Street, New York, N.Y. 10036-8099
212 790-4621

August 12, 1986

The Honorable William V. Roth, Jr.
United States Senate
Washington, D.C. 20510

Dear Senator Roth,

I regret that I shall not be able to be present personally to testify on behalf of John Agresto for the position of Archivist. I should, however, like to be recorded as enthusiastically supporting his candidacy.

For the past seven years I have been in a position to observe Mr. Agresto in his professional capacity, and I have formed an exceedingly favorable judgment of him. As a Trustee of the National Humanities Center and a member of the Executive Committee, I took a close interest in the operation of the Center during the period when Mr. Agresto was Projects Director. More recently, as a member of the Council of the National Endowment for the Humanities, I have been familiar with Mr. Agresto's performance first as Assistant Chairman, then as Deputy Chairman, and finally as Acting Chairman. In all of these capacities he fulfilled his duties conscientiously and impartially. He was not only an able administrator; he was a well-informed and thoughtful scholar who made an important intellectual contribution to the life of these institutions.

I have every confidence that Mr. Agresto will bring the same valuable qualities to the position of Archivist. His training in political science and history, his professorial experience, and his continued scholarly writings and activities eminently qualify him for that high office. And his good judgment and integrity are an assurance that he will carry out his duties prudently and judiciously.

It is, therefore, with great pleasure that I heartily endorse Mr. Agresto's nomination as Director of the National Archives.

Sincerely,

Gertrude Himmelfarb
Distinguished Professor of History

TESTIMONY
OF
DR. PHYLLIS ZAGANO
BEFORE THE
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
REGARDING
THE NOMINATION OF DR. JOHN AGRESTO
AS
ARCHIVIST OF THE UNITED STATES

September 9, 1986

Mr. Chairman and members of the Committee, I am Phyllis Zagano, and I am honored to be able to testify on behalf of the appointment of Dr. John T. Agresto as Archivist of the United States.

During the academic year 1979-1980, I was Program Officer of the National Humanities Center, an institute for advanced research in the humanities located in Research Triangle Park, North Carolina. Dr. Agresto was Special Projects Officer of the National Humanities Center at that time, and he in fact was one of five persons who interviewed me for the position. During my tenure there, he and I collaborated on a number of projects which typically involved the intricate nexus of complex budgeting and high-powered intellectual work common to research institutes of this nature. I found him to be a gentleman, a scholar, and a sensible administrator. He was an excellent colleague genuinely committed to excellence.

I am most troubled that there have been insinuations that John Agresto might not be the best person to implement and protect the regulations of the Equal Employment Opportunity Commission. I left the National Humanities Center to accept an assistant professorship at Fordham University. I left Fordham shortly after learning that my department chairman was an editorial writer for SCREW, the weekly anti-Catholic tabloid of pornography published in New York. My chairman had told me I was "too involved in

Catholic matters and affairs." Needless to say, I am now involved in various legal proceedings. The New York State Division of Human Rights recently found "probable cause" that Fordham discriminated against me because of my religion and my sex.

Therefore, as a "government certified" victim of sex and religious discrimination, I am pleased to assure you of John Agresto's commitment to the dignity of the person, his exceptional professionalism, and his genuine interest in furthering the careers of his colleagues and of his employees. It is patently ridiculous to assert that John Agresto is anything less than a fine and decent and honest man for whom race, sex, and religion form no barrier to professional competence. There is, in fact, ultimate sanity in his positions on affirmative action and quotas. There is little more reprehensible than keeping a qualified person out of a job because of race or religion or sex, and very often a quota system has this explicit effect. Dr. Agresto has pledged to uphold the law, and I assure you that he will do so. To believe otherwise is a grave injustice to the scholar and the man.

Gentlemen, I have been an academic all my life. I know more about libraries, computers and manuscripts than I do about the intricacies of political life. I have no particular political ax to swing at real or imagined opponents. I understand you are looking for an Archvist, and I respectfully submit that you have found one.

ADDENDUM

I am presently employed as a research fellow of the Rockford Institute, but do not testify on its behalf. I am also a member of several academic societies, including the American Journalism Historians Association (AJHA), the Association for Education in Journalism and Mass Communications, the Modern Language Association of America, and the American Catholic Philosophical Association (ACPA). I am a member of the editorial boards of two academic society journals, American Journalism (AJHA) and The New Scholasticism (ACPA). In addition, I am a contributing editor of Crisis (formerly Catholicism in Crisis). I am the author of over 50 articles and reviews on topics ranging from media criticism to intellectual history, and am editor of The Nuclear Arms Debate, published in 1983.

FROM THE ATTIC TO THE LIVING ROOM

In Support of Confirmation of John Agresto as National Archivist of the United States.

U. S. Senate Committee on Governmental Affairs
August 13, 1986

Jacob Neusner

University Professor
Ungerleider Distinguished Scholar of Judaic Studies

Brown University
Providence, Rhode Island

Every great nation and people creates its archive, which is how a civilization retains access to its past and brings perspective on its future. The use of the archive testifies to the character of the nation. My study of the works of ancient archivists gives me special perspective on the issue before us, which is the leadership of the National Archives. As a historian of the Jews in ancient times, with special interest in the history of their religion and law, I depend upon the results of archivists of old. They did not enjoy the hope of long-term and permanent, secure cities; their capital city was destroyed more than once. So they created an archive in a different form from the one we know. It was an archive collected in the mind and preserved in the memory of sages, a national archive of the soul and heart: this is what was, this is what happened, here is the record, we are its witnesses. The Bible and the Talmud, the national archives of ancient Israel, the Jewish people, present the counterpart to our National Archive. How they have served the Jewish people provides an important model -- though not the only model -- for what an archive can become, even in a (happily) more stable society and a more secure circumstance than ancient Israel's fate provided.

The National Archives form our tangible national treasure. As a strong nation we preserve our archive in a physical form, rather than in memory. But the National Archives can serve us as the Bible and the Talmud served, and continue to serve, the Jewish people, as source of our intellect, conscience, and character. Today we keep our Archives in a vast storage place, a trunk in the attic. So far as the Archive means to preserve the records of the nation, it succeeds. But if the task is not only to preserve but also to draw upon the Archive to sustain the mind and soul of the nation, as the living archives of ancient Israel have served the people and through them the whole of Western civilization, then I think we have to move the trunk from the attic to the living room, open it up, keep it open not only for display of the contents but also for use and reuse in age succeeding age. The National Archives can serve not only to preserve but also to enhance our heritage, not only to secure but to sustain, not only to display but to offer a demonstration of what we have been and can become. As a historian, therefore, I take a special interest in the definition of how the National Archives may serve still more effectively than it has done, how we may bring the trunk down from the attic to the living room, much as the Smithsonian has done.

As a Jewish American, I have a further special concern. The *Jewish Advocate* of Boston published in last week's issue an article remarkably timely for this hearing. In that article Edwin Black reported that the National Archives contains millions of documents relating to the Holocaust era, in the secure charge of Robert Wolfe. Mr. Wolfe has stated, "There is no greater evidence of the Holocaust than the contemporary records of the perpetrators themselves," and those records rest in the National Archives. These records have yet to be probed in a thorough way; they are not now catalogued; they have scarcely been appreciated, despite the excellence of Mr. Wolfe's guardianship. It is time for the Holocaust files to be moved from the attic to the study of scholars -- and thence into the living room of public discourse, so that such things can be known and therefore prevented.

Finally, as a scholar and professor in the field of ancient history and religion, I have a special concern that important Federal agencies of scholarship, culture, and education enjoy the leadership of persons of first rate intellect and character. Having served as President Carter's appointment for six years on the National Council on the Humanities, from 1978 to 1984, and serving now as President Reagan's appointment for a six year term as Member of the National Council on the Arts, 1984-1990, the only person to serve on the Councils of both Endowments, I know something about the special tasks of leadership and intelligent administration facing the National Archivist of the United States.

Let me respectfully address the issue facing this committee. I worked closely with Dr. John Agresto from the time Chairman Bennett and Assistant Chairman Agresto took up their duties, in January, 1982, until I resigned, on August 1, 1984, to assume my duties on the Arts Endowment Council. I know him and every aspect of his work well, and on an everyday basis.

My particular knowledge is relevant to this committee's task today, because I served for four years on the Committee on Research Programs, which reviewed and advised the chairman on all manner of archival projects. I state very simply that Dr. Agresto informed himself thoroughly on all of the archival projects and took a keen interest in their value, and this commitment formed part of his larger appreciation for scholarship in history, literature, philosophy, as well as in political science, his own field of scholarly specialization and qualification. As administrator Dr. Agresto enjoyed the high esteem of the staff, with whom he worked in good faith and with good will. Members of the Council found in him a responsive and thougtful colleague. Those of us who took the trouble to read his book and articles found ample reason to admire his power of intellect as well as his learning. This candidate deserves confirmation on grounds of personal competence and capacity.

But issues of public policy -- which are still more important -- point to the same conclusion. These are three.

First, the National Archives should become an important resource of education for democracy, a powerful instrument in the framing of the national consensus. A leader, an educator, a scholar, a person of experience and proved achievement in Federal service will turn the National Archives into that living repository of the nation's conscience, the immediate witness to its long-ago past, that it can become.

Second, the National Archives can become -- among its many important functions -- a principal world center for Holocaust research, which the creation of the United States Holocaust Memorial Council has identified as an important aspect of public policy in this country. A National Archivist committed to the importance of that research -- alongside research of a vast perspective -- will commence the long-term work now awaiting attention. This only begins to point to the many ways in which the National Archives can serve.

Third, the National Archives has long enjoyed leadership of a highly professional order and should continue to receive the direction of an experienced public servant, with a record of proven achievement in administration, work with staff, coooperation with Congress and the Administration, and, in all, good will and good works. Dr. John Agresto is a man who by training, temperament, and deep commitment as a human being treasures scholarship and understands how knowledge of the past, kept alive in a highly professional archive, can reshape our future as a nation.

For these three considerations I urge the Committee to recommend to the Senate the confirmation of John Agresto as National Archivist of the United States.

RESUME

Jacob Neusner
August 13. 1986

University Professor and Ungerleider Distinguished Scholar of Judaic Studies, Brown University

Address:
Program in Judaic Studies, Brown University
Providence, Rhode Island 02912-1826. U.S.A.

EDUCATION

1950-1953: Harvard College (Class of 1954). A. B., Magna Cum Laude, History. Phi Beta Kappa (November, 1952). Degree received: June, 1953
1953-1954: Lincoln College, Oxford University. Jewish History
1954-1957, and 1958-1960: Jewish Theological Seminary of America [1958-1960: Special Program in Talmud]
1957-1958: Hebrew University, Jerusalem, and Mir Yeshiva, Jerusalem
1958-1960: Joint Program in Religion, Columbia University and Union Theological Seminary
1960: M.H.L., Jewish Theological Seminary
1960: Ph.D., Religion, Columbia University

FELLOWSHIPS

1950-1953: Harvard College Scholarships
1953-1954: Henry Fellow, Oxford University
1954-1957: Jewish Theological Seminary of America Fellowships
1957-1958: Fulbright Scholar, Hebrew University
1958-1960: Fellow of Special Program in Talmud, Jewish Theological Seminary
1959-1960: University Scholar, Columbia University
1957-1960: Kent Fellow, National Council for Religion in Higher Education
1962: National Defense Foreign Language Fellowship in Persian, Harvard Summer School
1962-1964: Lown Fellow, Brandeis University
1965, 1967: Research Grants, American Philosophical Society
1966-1967: Research Fellowship, American Council of Learned Societies
1970-1971: Research Fellowship, American Council of Learned Societies
1973-1974: Guggenheim Foundation Fellowship
1979-1980: Guggenheim Foundation Fellowship
1968, 1969, 1970, 1972: Summer Research Stipends, Brown University
1974, 1980: Extraordinary research leave, Brown University

PROFESSIONAL POSITIONS

1960-1961: Columbia University. Instructor in Religion
1961-1962: University of Wisconsin-Milwaukee. Assistant Professor of Hebrew.
1962-1964: Brandeis University. Research Associate.
1964-1968: Dartmouth College. 1964-1966: Assistant Professor of Religion. 1966-1968: Associate Professor of Religion.
1968—: Brown University. 1968-1975: Professor of Religious Studies. 1975-1982: University Professor, Professor of Religious Studies, and Ungerleider Distinguished Scholar of Judaic Studies.
1982 – : University Professor and Ungerleider Distinguished Scholar of Judaic Studies.

HONORARY DEGREES AND AWARDS

1974: Columbia University. University Medal for Excellence
1978: University of Chicago. Doctor of Humane Letters (L.H.D.)
1979: University of Cologne. Doctor of Philosophy, *Honoris Causa* (Ph.D., h.c.)
1981: Von Humboldt Prize, Von Humboldt Foundation, Bonn.
1983: Ohio State University. Distinguished Humanitarian Award, Melton Center for Jewish Studies

OFFICES, EDITORSHIPS, PUBLIC SERVICE
(Selected list)

1960—	American Oriental Society. Life Member
1967-1968	American Academy of Religion. Vice President and Program Chairman. 1968-1969: President.
1968—	Fellow, Royal Asiatic Society
1968-1973	Association for Jewish Studies. Member, Founding committee, and Board of Directors.
1968-1969	Council on the Study of Religion. Member, founding committee. Delegate: American Academy of Religion.
1969—	Max Richter Foundation. Founder and president.
1972—	American Academy for Jewish Research. 1972: Elected Fellow. 1976-1981: Member, Executive Committee.
1973—	*Trinity University Monograph Series in Religion*. Board of Editors.
1973—	*Studies in Judaism in Late Antiquity*. Monograph series, E. J. Brill. Founder and Editor.
1975—	*Studies in Judaism in Modern Times*. Monograph series, E. J. Brill. Founder and Editor
1975—	*Library of Judaic Learning*. Textbook series, Ktav Publishing House. Founder and Editor.
1976—	*Brown Judaic Studies*. Monograph series, Scholars Press. Founder and Editor-in-chief.
1978-1984	National Endowment for the Humanities. Member: National Council on the Humanities. 1978-1980: Committee on Planning and Special Programs. 1980-1984: Committee on Research Projects. Various other committees (Budget, Jefferson Lectures).
1979-1984	American Academy of Religion. Chairman, Section on the History of Judaism.
1980—	*Chicago Studies in the History of Judaism*. Scholarly monograph series, University of Chicago Press. Founder and Editor.
1980—	*The Second Century*. Member, editorial board.
1980-1981	European Association for Jewish Studies. Organizer, founding meetings: Oxford, May,1981, July 1982.
1981-1987	American Association of University Professors. Member, Committee on College and University Teaching, Research and Publication (Committee C) (two terms).
1981—	*Basic Jewish Ideas*. Text book series, Rossel Books. Founder and Editor.
1983—	*The Reconstructionist*. Contributing Editor.
1984—	Brown Classics of Judaic Learning. Scholarly reprint series, University Press of America. Founder and Editor-in-chief.
1984—	*Translation and Reprint Series*, Scholars Press. Member, Advisory Board.
1984—	*Jewish Advocate* (Boston). Contributing Editor.
1984-1990	National Endowment for the Arts. Member: National Council on the Arts. Committee service: 1986: Long range Enhancement Committee.
1985—1990	*Journal of the American Academy of Religion*. Member, Editorial board.
1985—	*Hebrew Annual Review*. Member, Editorial Board.
1985—	*Religious and Theological Studies*. Member, Editorial Board.
19[illegible]—	*Brown Studies on Jews and their Societies*. Scholars Press. Founder and Editor.
1985—	North American Society for the Study of Religion. Member, founding committee.
1986	Interuniversity Council on Judaic Studies, Inc. Member, founding committee, Treasurer.
1986—	*Studies in Judaism* , University Press of America. Founder and Editor.
1986—	*Hebrew Studies*. Member, Editorial Board.

LECTURES

(Named lectures, conference addresses, international presentations only)

1968	Morron Lecture, Hamilton College
1969	B. G. Rudolph Lecture in Judaic Studies, Syracuse University
1971	Lown Lecture, Brandeis University
1971	Lecture tour: Uppsala University, Lund University, Sweden; University of Copenhagen; Institute for Judaic Studies and Institute for Iranian Studies, Free University, Berlin; University of Cologne; University of Vienna; University of Oxford.
1972	Rosenstiel Lectures, Notre Dame University

1973	Haskell Lectures, Oberlin College
1975	Edgar Magnin Lecture, Hebrew Union College-Jewish Institute of Religion, Los Angeles
1974	Edgar J. Goodspeed Lecture, Denison University
1974	Conference Lecture, University of Iowa
1975	Merrick Lectures, Ohio Wesleyan University
1975	Seventh annual Religious Studies Lecture, University of Minnesota
1975	Minicourse. University of Utah.
1976	Bernstein Conference Lecture, University of Rochester
1976	Lecture tour: Keynote address, national congress, South African Jewish Board of Deputies, Johannesburg. Lectures Jewish communities of Cape Town, Port Elizabeth, Bloemfontein, Durban, Johannesburg; Stellenbosch University, Witswatersrand University, University of Cape Town. Oxford University; Haifa University; Bar Ilan University.
1977	Inaugural Lecture, Cohen Chair of Judaic Studies, Emory University
1977	Lectures for the inauguration of Howard Swearer as President of Brown University. Dean of the College's colloquium. Graduate School colloquium.
1977	Conference address, University of Chicago Divinity School
1977	Invited Public Lecturer, American Academy for Jewish Research
1977	Lecture tour: Academic congress in honor of the 500th anniversary of Tuebingen University. Lectures: University of Cologne; Free University of Berlin; Evangelische Hochschule, Berlin; King's College, London; Oxford University; University of Manchester.
1978	Convocation lecture, University of Chicago.
1978	Invited Plenary Lecture, Tenth Annual Meeting, Association for Jewish Studies
1978	Invited Plenary Lecture, American Academy for Jewish Research
1979	Samuel Friedland Lecture, The Jewish Theological Seminary of America
1979	Invited Plenary Lecture, Society of Biblical Literature. Annual meeting
1979	Inaugural lecture, Department of Religious Studies, Arizona State University
1979	Opening ceremony, building dedication. School of Jewish Studies, Tel Aviv University
1980	Phi Beta Kappa Address, 150th anniversary, Alpha of Rhode Island. Brown University
1980	Lecture tour: Tuebingen University; University of Strasbourg, University of Cologne, Dutch Society for Judaic Studies at Utrecht University; University of Groningen; Oxford University; London conference of Tel Aviv University; University College, London
1980	Spindel Memorial Lecture, Bowdoin College
1980	Principal Lecture, Midwest Scholars Dialogue, University of Dayton
1980	Charles Merrill Lecture, Florida State University
1981	Sacks Lecture, Oxford University. Lecture: University of Edinburgh. Seminar: Cambridge University
1981	Conference address, Bar Ilan University
1981	Keynote address, New England Association of Schools and Colleges. Annual meeting, Boston
1981	Catholic Academy of Bavaria (Munich). Conference address
1982	The Richard Lectures, University of Virginia
1983	Ohio State University. Distinguished Humanitarian Lecture.
1983	Lecture tour: University of Sydney; MacQuarrie University, Sydney; University of Melbourne; Auckland University; New Zealand Baptist Theological College
1984	Associazione Italiana per lo studio del Giudaismo, annual meeting, San Miniato, Italy. Plenary address.
1984	Simon Rawidovitch Memorial Lecture, Brandeis University
1984	Third Annual Plenary Address: "How My Mind Has Changed." Society of Biblical Literature, national meeting, Chicago
1984	Inaugural lecture, Smart Chair, Duke University
1984	The Gale Lecture, University of Texas
1985	Lecture tour: University of Iceland, University of Bergen, University of Trondheim, University of Oslo, University of Helsinki, Åbo Academy, Åbo/Turku.
1985	Conference addresses, International Association for the History of Religions, University of Sydney; University of Queensland, Brisbane.

1985	Scholars Press Lecturer, American Academy of Religion-Society of Biblical Literature National Meeting, Anaheim.
1985	University of Toronto. Religion in the Modern World Series.
1985	Cambridge Forum. Lecture broadcast [National Public Radio].
1986	Liss Lecture, University of Notre Dame
1986	Bokser Memorial Lecture, Queens College
1986	Coser Lecture in Jewish Social Science, Hunter College
1986	Bucknell University. Special Humanities Lecture
1986	Lecture tour: Irish Biblical Association; Trinity College, Dublin; The Queen's University, Belfast
1986	Colloquium Address, University of California, Santa Barbara.
1987	Lecture-trips in the planning: Korean Association of Theological Schools; plenary address, European Association for Jewish Studies, West Berlin; plenary address, International Association for the History of Religions study conference on emotion in religion, Sri Lanka

BOOKS

1. The pre-critical stage.

A Life of Yohanan ben Zakkai. Leiden, 1962: Brill. Awarded the Abraham Berliner Prize in Jewish History, Jewish Theological Seminary of America, 1962. Second edition, completely revised, 1970.

Japanese translation: Yamamoto Shoten Publishing House, Tokyo. Expected in 1987.

A History of the Jews in Babylonia. Leiden: Brill, 1965-1970. I-V.

I. *A History of the Jews in Babylonia. The Parthian Period.* 1965. Second printing, revised, 1969. Third printing: Chico, 1984: Scholars Press for Brown Judaic Studies.
II. *A History of the Jews in Babylonia. The Early Sasanian Period.* 1966.
III. *A History of the Jews in Babylonia. From Shapur I to Shapur II.* 1968.
IV. *A History of the Jews in Babylonia. The Age of Shapur II.* 1969.
V. *A History of the Jews in Babylonia. Later Sasanian Times.* 1970.

Aphrahat and Judaism. The Christian Jewish Argument in Fourth Century Iran. Leiden, 1971: Brill.

2. The beginning of the critical enterprise.

Development of a Legend. Studies on the Traditions Concerning Yohanan ben Zakkai. Leiden, 1970: Brill.

The Rabbinic Traditions about the Pharisees before 70. Leiden, 1971: Brill. I-III.

I. *The Rabbinic Traditions about the Pharisees before 70. The Masters.*
II. *The Rabbinic Traditions about the Pharisees before 70. The Houses.*
III. *The Rabbinic Traditions about the Pharisees before 70. Conclusions.*

Eliezer ben Hyrcanus. The Tradition and the Man. Leiden, 1973: Brill.

I. *Eliezer ben Hyrcanus. The Tradition and the Man. The Tradition.*
II. *Eliezer ben Hyrcanus. The Tradition and the Man. The Man.*

3. Literature

The Work of Description of the Sources:
Describing the Canon, Document by Document.

9

The Form-Analytical and Exegetical Stage including translation into American English of the principal documents of the canon of Judaism

A History of the Mishnaic Law of Purities. Leiden, 1974-1977: Brill. I-XXII.

I. *Kelim. Chapters One through Eleven.* 1974.
II. *Kelim. Chapters Twelve through Thirty.* 1974.
III. *Kelim. Literary and Historical Problems.* 1974.
IV. *Ohalot. Commentary.* 1975.
V. *Ohalot. Literary and Historical Problems.* 1975.
VI. *Negaim. Mishnah-Tosefta.* 1975.
VII. *Negaim. Sifra.* 1975.
VIII. *Negaim. Literary and Historical Problems.* 1975.
IX. *Parah. Commentary.* 1976.
X. *Parah. Literary and Historical Problems.* 1976.
XI. *Tohorot. Commentary.* 1976.
XII. *Tohorot. Literary and Historical Problems.* 1976.
XIII. *Miqvaot. Commentary.* 1976.
XIV. *Miqvaot. Literary and Historical Problems.* 1976.
XV. *Niddah. Commentary.* 1976.
XVI. *Niddah. Literary and Historical Problems.* 1976.
XVII. *Makhshirin.* 1977.
XVIII. *Zabim.* 1977.
XIX. *Tebul Yom. Yadayim.* 1977.
XX. *Uqsin. Cumulative Index, Parts I-XX.* 1977.

The Tosefta. Translated from the Hebrew. N.Y., 1977-1980: Ktav. II-VI.

II. *The Tosefta. Translated from the Hebrew. Second Division. Moed.*
III. *The Tosefta. Translated from the Hebrew. Third Division. Nashim.*
IV. *The Tosefta. Translated from the Hebrew. Fourth Division. Neziqin.*
V. *The Tosefta. Translated from the Hebrew. Fifth Division. Qodoshim.*
VI. *The Tosefta. Translated from the Hebrew. Sixth Division. Tohorot.*

Edited: *The Tosefta. Translated from the Hebrew. I. The First Division (Zeraim).* N.Y., 1985: Ktav.

The Tosefta: Its Structure and its Sources. Atlanta, 1986: Scholars Press for Brown Judaic Studies. Reprise of pertinent results in *Purities* I-XXI.

A History of the Mishnaic Law of Holy Things. Leiden, Brill: 1979. I-VI.

I. *Zebahim. Translation and Explanation.*
II. *Menahot. Translation and Explanation.*
III. *Hullin, Bekhorot. Translation and Explanation.*
IV. *Arakhin, Temurah. Translation and Explanation.*
V. *Keritot, Meilah, Tamid, Middot, Qinnim. Translation and Explanation.*

Form Analysis and Exegesis: A Fresh Approach to the Interpretation of Mishnah. Minneapolis, 1980: University of Minnesota Press.

A History of the Mishnaic Law of Women. Leiden, Brill: 1979-1980. I-V.

I. *Yebamot. Translation and Explanation.*
II. *Ketubot. Translation and Explanation.*
III. *Nedarim, Nazir. Translation and Explanation.*
IV. *Sotah, Gittin, Qiddushin. Translation and Explanation.*

A History of the Mishnaic Law of Appointed Times. Leiden, Brill: 1981-1983. I-V.

I. *Shabbat. Translation and Explanation.*
II. *Erubin, Pesahim. Translation and Explanation.*
III. *Sheqalim, Yoma, Sukkah. Translation and Explanation.*
IV. *Besah, Rosh Hashshanah, Taanit, Megillah, Moed Qatan, Hagigah. Translation and Explanation.*

A History of the Mishnaic Law of Damages. Leiden, Brill: 1983-1985. I-V.

I. *Baba Qamma. Translation and Explanation.*
II. *Baba Mesia. Translation and Explanation.*
III. *Baba Batra, Sanhedrin, Makkot. Translation and Explanation.*
IV. *Shebuot, Eduyyot, Abodah Zarah, Abot, Horayyot. Translation and Explanation.*

The Mishnah. A New Translation. New Haven and London, 1986: Yale University Press.

The Talmud of the Land of Israel. A Preliminary Translation and Explanation. Chicago: The University of Chicago Press: 1982-1989. IX-XII, XIV-XV, XVII-XXXV.

XXXIV. *Horayot. Niddah.* 1982.
XXXIII. *Abodah Zarah.* 1982.
XXXII. *Shebuot.* 1983.
XXXI. *Sanhedrin. Makkot.* 1984.
XXX. *Baba Batra.* 1984.
XXIX. *Baba Mesia.* 1984.
XXVIII. *Baba Qamma.* 1984.
XXVII. *Sotah.* 1984.
XXVI. *Qiddushin.* 1984.
XXV. *Gittin.* 1985
XXIV. *Nazir.* 1985.
XXIII. *Nedarim* 1985.
XXII. *Ketubot.* 1985.
XXI. *Yebamot.* 1986.
XX. *Hagigah. Moed Qatan* . 1986.
XIX. *Megillah.* 1987.
XVIII. *Besah. Taanit.* 1987.
XVII. *Sukkah.* 1987.
XV. *Sheqalim.* 1988.
XIV. *Yoma.* 1988.
XII. *Erubin.* 1988.
XI. *Shabbat.* 1989.
X. *Orlah. Bikkurim.* 1989.
IX. *Hallah.* 1989.

Edited: *In the Margins of the Yerushalmi. Notes on the English Translation.* Chico, 1983: Scholars Press for Brown Judaic Studies.

The Talmud of Babylonia. An American Translation. Chico, 1984-1985: Scholars Press for Brown Judaic Studies.

I. *Berakhot.*
VI. *Sukkah.*
XXIII.A. *Sanhedrin I-III.*
XXIII.B. *Sanhedrin IV-VIII.*
XXIII.C. *Sanhedrin IX-XI.*

XXXII. *Arakhin.*

For Leviticus Rabbah, see below, *Judaism and Scripture: The Evidence of Leviticus Rabbah.*

Genesis Rabbah. The Judaic Commentary on Genesis. A New American Translation. Atlanta, 1985: Scholars Press for Brown Judaic Studies.

I. *Genesis Rabbah. The Judaic Commentary on Genesis. A New American Translation. Parashiyyot One through Thirty-Three. Genesis 1:1-8:14.*

II. *Genesis Rabbah. The Judaic Commentary on Genesis. A New American Translation. Parashiyyot Thirty-Four through Sixty-Seven. Genesis 8:15-28:9.*

III. *Genesis Rabbah. The Judaic Commentary on Genesis. A New American Translation. Parashiyyot Sixty-Eight through One Hundred. Genesis 28:10-50:26.*

Sifra. The Judaic Commentary on Leviticus. A New Translation. The Leper. Leviticus 13:1-14:57. Chico, 1985: Scholars Press for Brown Judaic Studies. Based on the translation of *Sifra Parashiyyot Negaim* and *Mesora* in *A History of the Mishnaic Law of Purities. VI. Negaim. Sifra.* [With a section by Roger Brooks.]

Sifré to Numbers. An American Translation. I. *1-58.* Atlanta, 1986: Scholars Press for Brown Judaic Studies

Sifré to Numbers. An American Translation. II. *59-115.* Atlanta, 1986: Scholars Press for Brown Judaic Studies. [III. *116-161*: William Scott Green].

The Fathers According to Rabbi Nathan. An Analytical Translation and Explanation. Atlanta, 1986: Scholars Press for Brown Judaic Studies.

Pesiqta deRab Kahana. An Analytical Translation and Explanation. I. *1-9.* Atlanta, 1986: Scholars Press for Brown Judaic Studies.

Underway:

Pesiqta deRab Kahana. An Analytical Translation and Explanation. II. *10-19.* Atlanta, 1987: Scholars Press for Brown Judaic Studies.

Pesiqta deRab Kahana. An Analytical Translation and Explanation. III. *20-28. Introduction.* Atlanta, 1987: Scholars Press for Brown Judaic Studies.

4. *History*

The Work of Analysis of the Sources.

Comparison and Contrast among the Components of the Canon of Formative Judaism

A History of the Mishnaic Law of Purities. Leiden, 1977: Brill.

XXI. *The Redaction and Formulation of the Order of Purities in the Mishnah and Tosefta.*

XXII. *The Mishnaic System of Uncleanness. Its Context and History.*

A History of the Mishnaic Law of Holy Things. Leiden, 1979: Brill.

VI. *The Mishnaic System of Sacrifice and Sanctuary.*

A History of the Mishnaic Law of Women. Leiden, 1980: Brill.

V. *The Mishnaic System of Women.*

A History of the Mishnaic Law of Appointed Times. Leiden, 1981: Brill.

V. *The Mishnaic System of Appointed Times.*

A History of the Mishnaic Law of Damages. Leiden, 1985: Brill.

V. *The Mishnaic System of Damages*

The Talmud of the Land of Israel. A Preliminary Translation and Explanation. Chicago: The University of Chicago Press: 1983.

XXXV. *Introduction. Taxonomy.*

The Integrity of Leviticus Rabbah. The Problem of the Autonomy of a Rabbinic Document. Chico, 1985: Scholars Press for Brown Judaic Studies.

Comparative Midrash: The Plan and Program of Genesis Rabbah and Leviticus Rabbah. Atlanta, 1986: Scholars Press for Brown Judaic Studies.

Canon and Connection: Intertextuality in Judaism. Lanham, 1986: University Press of America. *Studies in Judaism* Series.

5. *Religion*

The Work of Interpretation of the Sources

Reconstructing the History of the Formation of Judaism

Judaism. The Evidence of the Mishnah. Chicago, 1981: University of Chicago Press. *Choice,* "Outstanding academic book list" 1982-3. Paperback edition: 1984. Second printing, 1985. Third printing, 1986.

Hayyahadut le'edut hammishnah. Hebrew translation of *Judaism. The Evidence of the Mishnah.*: Tel Aviv, 1986: Sifriat Poalim.

Italian translation: Torino, 1988: Editrice Marietti.

Judaism in Society: The Evidence of the Yerushalmi. Toward the Natural History of a Religion . Chicago, 1983: The University of Chicago Press. *Choice* , "Outstanding Academic Book List, 1984-1985."

Judaism and Scripture: The Evidence of Leviticus Rabbah. Chicago, 1986: The University of Chicago Press. [Fresh translation of Margulies' text and systematic analysis of problems of composition and redaction.] Jewish Book Club Selection, 1986.

Judaism: The Classical Statement. The Evidence of the Bavli. Chicago, 1986: University of Chicago Press.

Ancient Israel after Catastrophe. The Religious World-View of the Mishnah. The Richard Lectures for 1982. Charlottesville, 1983: The University Press of Virginia.

The Foundations of Judaism. Method, Teleology, Doctrine. Philadelphia, 1983-5: Fortress Press. I-III.

I. *Midrash in Context. Exegesis in Formative Judaism.*

II. *Messiah in Context. Israel's History and Destiny in Formative Judaism.*

Italian translation: Casale Monferrato, 1988: Editrice Marietti

III. *Torah: From Scroll to Symbol in Formative Judaism.*

The Foundations of Judaism. Philadelphia, 1987: Fortress. Abridged edition of the trilogy.

The Oral Torah. The Sacred Books of Judaism. An Introduction. San Francisco, 1985: Harper & Row. Paperback: 1987. Bnai Brith Jewish Book Club Selection, 1986.

Scriptures from the Oral Torah. An Anthology of the Sacred Books of Judaism. San Francisco, 1987: Harper & Row.

Vanquished Nation, Broken Spirit. The Virtues of the Heart in Formative Judaism. New York, 1986: Cambridge University Press.

Editor: *To See Ourselves as Others See Us." Jews, Christians, "Others" in Late Antiquity.* [Edited with Ernest S. Frerichs] Chico, 1985: Scholars Press. Studies in the Humanities.

Editor: *Judaic Perspectives on Ancient Israel.* [Edited with Baruch A. Levine and Ernest S. Frerichs.] Philadelphia, 1987: Fortress Press.

Editor: *Judaisms and their Messiahs in the beginning of Christianity.* New York, 1987: Cambridge University Press. [Edited with William Scott Green and Ernest S. Frerichs.]

Editor: *Goodenough's Jewish Symbols. An Abridged Edition.* Princeton, 1986: Princeton University Press.

Judaism in the Matrix of Christianity. Philadelphia, 1986: Fortress Press.

Judaism and Christianity in the Age of Constantine. History, Messiah, Israel, and the Initial Confrontation. Chicago, 1987: University of Chicago Press.

The Death and Birth of Judaism. New York, 1987: Basic Books.

Self-Fulfilling Prophecy: Exile and Return in the History of Judaism. Boston, 1987: Beacon Press.

Editor: *Goodenough on History of Religion and on Judaism.* Lanham, 1986: University Press of America. *Studies in Judaism* Series. [With Ernest S. Frerichs].

Judaism and Story: The Evidence of The Fathers According to Rabbi Nathan. Submitted to University of Chicago Press.

Editor: *Religion and Magic, Learning and Magic, in Ancient and Medieval Times.* [Tentative title.] [Edited with Ernest S. Frerichs.] Papers given at a conference planned for August, 1987.

6. *Explaining the Enterprise*

Exposition of Problems of Method

Editor: *The Formation of the Babylonian Talmud. Studies on the Achievements of Late Nineteenth and Twentieth Century Historical and Literary-Critical Research.* Leiden, 1970: Brill.

Editor: *The Modern Study of the Mishnah.* Leiden, 1973: Brill.

Editor: **Soviet Views of Talmudic Judaism. Five Papers by Yu. A. Solodukho.* Leiden, 1973: Brill.

From Mishnah to Scripture. The Problem of the Unattributed Saying. Chico, 1984: Scholars Press for Brown Judaic Studies. Reprise and reworking of materials in *A History of the Mishnaic Law of Purities.*

In Search of Talmudic Biography. The Problem of the Attributed Saying. Chico, 1984: Scholars Press for Brown Judaic Studies. Reprise and reworking of materials in *Eliezer ben Hyrcanus. The Tradition and the Man.*

The Peripatetic Saying: The Problem of the Thrice-Told Tale in Talmudic Literature. Chico, 1985: Scholars Press for Brown Judaic Studies. Reprise and reworking of materials in *Development of a Legend; Rabbinic Traditions about the Pharisees before 70* I-III.

The Memorized Torah. The Mnemonic System of the Mishnah. Chico, 1985: Scholars Press for Brown Judaic Studies. Reprise and reworking of materials in *Rabbinic Traditions about the Pharisees before 70* I and III, and *A History of the Mishnaic Law of Purities* XXI.

Editor: *The Study of Ancient Judaism.* N.Y., 1981: Ktav.

- I. *The Study of Ancient Judaism: Mishnah, Midrash, Siddur.*
- II. *The Study of Ancient Judaism: The Palestinian and Babylonian Talmuds.*

Editor: *Take Judaism, for Example. Studies toward the Comparison of Religions.* Chicago, 1983: University of Chicago Press.

Method and Meaning in Ancient Judaism. Missoula, 1979: Scholars Press for Brown Judaic Studies. Second printing, 1983.

Method and Meaning in Ancient Judaism. Second Series. Chico, 1980: Scholars Press for Brown Judaic Studies.

Method and Meaning in Ancient Judaism. Third Series. Chico, 1980: Scholars Press for Brown Judaic Studies.

Ancient Judaism. Disputes and Debates. Chico, 1984: Scholars Press for Brown Judaic Studies.

The Public Side of Learning. The Political Consequences of Scholarship in the Context of Judaism. Atlanta, 1985: Scholars Press for the American Academy of Religion *Studies in Religion* Series.

Reading and Believing: Ancient Judaism and Contemporary Gullibility. Atlanta, 1986: Scholars Press for Brown Judaic Studies.

Ancient Judaism and Modern Category-Formation. "Judaism," "Midrash," "Messianism," and Canon in the Past Quarter-Century. Lanham, 1986: University Press of America *Studies in Judaism* Series.

7. *Restatement of Results*

Systematic *Haute Vulgarisation*
for the wider scholarly world

Early Rabbinic Judaism. Historical Studies in Religion, Literature, and Art. Leiden, 1975: Brill.

The Academic Study of Judaism. Essays and Reflections. N.Y., 1975: Ktav Publishing House. Second printing, Chico, 1982: Scholars Press for Brown Judaic Studies.

The Academic Study of Judaism. Second Series. N.Y., 1977: Ktav Publishing House.

The Academic Study of Judaism. Third Series. Three Contexts of Jewish Learning. N.Y., 1980: Ktav Publishing House.

Talmudic Judaism in Sasanian Babylonia. Essays and Studies. Leiden, 1976: Brill.

Judaism in the American Humanities. Chico, 1981: Scholars Press for Brown Judaic Studies.

Judaism in the American Humanities. Second Series. Jewish Studies and the New Humanities. Chico, 1983: Scholars Press for Brown Judaic Studies.

Das pharisäische und talmudische Judentum. Tuebingen, 1984: J.C.B.Mohr (Paul Siebeck). Edited by Hermann Lichtenberger. Foreword by Martin Hengel. Italian translation under way.

Formative Judaism. Religious, Historical, and Literary Studies. First Series. Chico, 1982: Scholars Press for Brown Judaic Studies.

Formative Judaism. Religious, Historical, and Literary Studies. Second Series. Chico, 1983: Scholars Press for Brown Judaic Studies.

Formative Judaism. Religious, Historical, and Literary Studies. Third Series. Torah, Pharisees, and Rabbis. Chico, 1983: Scholars Press for Brown Judaic Studies.

Formative Judaism. Religious, Historical, and Literary Studies. Fourth Series. Problems of Classification and Composition. Chico, 1984: Scholars Press for Brown Judaic Studies.

Formative Judaism. Religious, Historical, and Literary Studies. Fifth Series. Revisioning the Written Records of a Nascent Religion. Chico, 1985: Scholars Press for Brown Judaic Studies.

Major Trends in Formative Judaism. First Series. Society and Symbol in Political Crisis. Chico, 1983: Scholars Press for Brown Judaic Studies.

Major Trends in Formative Judaism. Second Series. Texts, Contents, and Contexts. Chico, 1984: Scholars Press for Brown Judaic Studies.

Major Trends in Formative Judaism. Third Series. The Three Stages in the Formation of Judaism. Chico, 1985: Scholars Press for Brown Judaic Studies.

Italian translation: Casale Monferrato, 1988: Editrice Marietti

The Religious Study of Judaism. Description, Analysis, Interpretation. Volume One. Lanham, 1986: University Press of America *Studies in Judaism* Series.

The Religious Study of Judaism. Description, Analysis, Interpretation. Volume Two. *The Centrality of Context.* Lanham, 1986: University Press of America *Studies in Judaism* Series.

Understanding Seeking Faith. Essays on the Case of Judaism. Volume I. *Debates on Method, Reports of Results.* Atlanta, 1986: Scholars Press for Brown Judaic Studies.

The Pharisees. Rabbinic Perspectives. N.Y., 1985: Ktav Publishing House. Reprise of *Rabbinic Traditions about the Pharisees before 70.* I-III.

Israel and Iran in Talmudic Times. A Political History. Lanham, 1986: University Press of America Studies in Judaism Series. Condensation of materials in *A History of the Jews in Babylonia* II-V, parts of chapter one of each volume.

Judaism, Christianity, and Zoroastrianism in Talmudic Babylonia. Lanham, 1986: University Press of America Studies in Judaism Series. Condensation of materials in *A History of the Jews in Babylonia* II-V, parts of chapter one of each volume and of *Aphrahat and Judaism.*

Israel's Politics in Sasanian Iran. Jewish Self-Government in Talmudic Times. Lanham, 1986: University Press of America Studies in Judaism Series. Condensation of materials in *A History of the Jews in Babylonia* II-V, parts of chapter two of each volume.

Underway:

The Religious Study of Judaism. Description, Analysis, Interpretation. Volume Three. *Text, Context, Circumstance.* Lanham, 1987: University Press of America Studies in Judaism Series.

8. Toward the Creation of a New Academy:

i. Scholarly Books Organized and Edited

Editor: *Report of the 1965-1966 Seminar on Religions in Antiquity.* Hanover, 1966: Dartmouth College Comparative Studies Center. Reprinted, 1984.

Editor: *Religions in Antiquity. Essays in Memory of Erwin Ramsdell Goodenough.* Leiden, 1968: Brill. Supplements to *Numen.* Vol XIV. Second printing, 1970; third printing, 1972.

Editor: *Christianity, Judaism, and Other Greco-Roman Cults. Studies for Morton Smith at Sixty.* Leiden, 1975: Brill.

I. *New Testament*
II. *Early Christianity*
III. *Judaism before 70*
IV. *Judaism after 70. Other Greco-Roman Cults*

Editor: *Essays in Honor of Yigael Yadin.* [Edited with Geza Vermes]. Special issue of *Journal of Jewish Studies,* 1982.

Editor: *The New Humanities and Academic Disciplines. The Case of Jewish Studies.* Madison, 1984: University of Wisconsin Press.

Now underway:

Editor: *Religion and Society in Ancient Times. Essays in Honor of Howard Clark Kee.* [Edited with Richard Horsley, Peder Borgen, and Ernest S. Frerichs.] Planned for 1987.

9. Toward the Creation of the New Academy:

(ii). Providing Textbooks for Undergraduate Instruction and Popular Works for the Public at Large.

Fellowship in Judaism. The First Century and Today. London, 1963: Vallentine, Mitchell.

History and Torah. Essays on Jewish Learning. London, 1965: Vallentine, Mitchell. N.Y., 1966: Schocken Books. Paperback, N.Y., 1967: Schocken.

Judaism in the Secular Age. Essays on Fellowship, Community, and Freedom. London, 1970: Valentine Mitchell. N.Y., 1970: Ktav.

The Way of Torah. An Introduction to Judaism. Encino, 1970: Dickenson Publishing Co. In *Living Religion of Man* Series, edited by Frederick Streng. Second printing, 1971. Third printing, 1971. Second edition, revised, 1973. Third printing, 1976. Third edition, thoroughly revised, Belmont: 1979: Wadsworth Publishing Co. Third printing, 1980. Fourth printing, 1982. Fifth printing, 1983. Sixth printing, 1985. Seventh printing, 1986. Fourth edition, thoroughly revised and rewritten: 1987.

Editor: *Life of Torah. Readings in the Jewish Religious Experience.* Encino, 1974: Dickenson Publishing Co. Third printing, Belmont, 1980: Wadsworth. Sixth printing, 1984.

There We Sat Down. Talmudic Judaism in the Making. Nashville, 1972: Abingdon. Second printing, N.Y., 1978: Ktav.

American Judaism. Adventure in Modernity. Englewood Cliffs, 1972: Prentice-Hall. Second printing, 1973. Third printing, 1976. Fourth printing, N.Y., 1978: Ktav.

From Politics to Piety. The Emergence of Pharisaic Judaism. Englewood Cliffs, 1973: Prentice-Hall. Second printing, N.Y., 1978: Ktav. Japanese translation: Tokyo, 1985: Kyo Bun Kwan.

Editor: *Contemporary Judaic Fellowship. In Theory and in Practice.* N.Y., 1972: Ktav.

Invitation to the Talmud. A Teaching Book. N.Y., 1973: Harper & Row. Second printing, 1974. Paperback edition, 1975. Reprinted: 1982. Second edition, completely revised, San Francisco, 1984: Harper & Row.

Japanese translation: Tokyo, 1987: Yamamoto Shoten.

Editor: *Understanding Jewish Theology. Classical Themes and Modern Perspectives.* N.Y., 1973: Ktav. To date: three printings.

Editor: *Understanding Rabbinic Judaism. From Talmudic to Modern Times.* N.Y., 1974: Ktav. Second printing, 1977. Fourth printing, 1985.

First Century Judaism in Crisis. Yohanan ben Zakkai and the Renaissance of Torah. Nashville, 1975: Abingdon. Second printing, N.Y., 1981: Ktav.

Between Time and Eternity. The Essentials of Judaism. Encino, 1976: Dickenson Publishing Co. Fifth printing, Belmont, 1983: Wadsworth.

Editor: *Understanding American Judaism. Toward the Description of a Modern Religion* . N.Y., 1975: Ktav.

I. *Understanding American Judaism. Toward the Description of a Modern Religion* . *The Synagogue and the Rabbi.*

II. *Understanding American Judaism. Toward the Description of a Modern Religion* . *The Sectors of American Judaism: Reform, Orthodoxy, Conservatism, and Reconstructionism.*

Stranger at Home. Zionism, "The Holocaust," and American Judaism. Chicago, 1980: University of Chicago Press. Paperback edition, 1985. Second printing, 1985.

Torah from Our Sages: Pirke Avot. A New American Translation and Explanation. Chappaqua, 1983: Rossel. Paperback edition: 1986.

Tsedakah. Can Jewish Philanthropy Buy Jewish Survival? Chappaqua, 1982: Rossel. Second printing, 1983.

Our Sages, God, and Israel. An Anthology of the Yerushalmi . Chappaqua, 1984: Rossel. 1985 selection, Jewish Book Club.

The Jewish War against the Jews. Reflections on Golah, Shoah, and Torah. N.Y., 1984: Ktav.

How To Grade Your Professors and Other Unexpected Advice. Boston, 1984: Beacon. Second printing: 1984.

Judaism in the Beginning of Christianity. Philadelphia, 1983: Fortress. British edition, London, 1984: SPCK.

French translation: *Le judaisme a l'aube du christianisme.* Paris, 1986: Editions du Cerf.

German translation: Stuttgart, 1987: Calwerverlag.

Dutch translation: Kampen, 1986: J. H. Kok.

Norwegian translation: Trondheim, 1987: Tapir Publishers, University of Trondheim.

Israel in America. A Too-Comfortable Exile? Boston, 1985: Beacon. Paperback edition, 1986.

Genesis and Judaism: The Perspective of Genesis Rabbah. An Analytical Anthology. Atlanta, 1986: Scholars Press for Brown Judaic Studies.

Judaism: The First Two Centuries. Abbreviated version of *Judaism : The Evidence of the Mishnah.* Chicago, 1987: University of Chicago Press.

Christian Faith and the Bible of Judaism. Grand Rapids, 1987: Wm. B. Eerdmans Publishing Co.

Reading Scriptures: An Introduction to Rabbinic Midrash. With Special Reference to Genesis Rabbah. Chappaqua, 1987: Rossel.

From Testament to Torah: An Introduction to Judaism in its Formative Age. Englewood Cliffs, 1987: Prentice Hall.

Planned:

A textbook anthology of documents and scholarly discussion to accompany *Self-Fulfilling Prophecy: Exile and Return as the History of Judaism* (Committed for 1988 to Beacon Press). [With Calvin Goldscheider.]

10. Toward the Creation of the New Academy:

(iii) Facing the Future. Children's Textbooks

Learn Mishnah N.Y., 1978: Behrman. Italian translation: *Come si studia la Mishna.* Rome, 1983: Unione delle Comunita Israelitiche Italiane.

Learn Talmud. N.Y., 1979: Behrman.

Meet Our Sages. N.Y., 1980:Behrman.

Mitzvah. Chappaqua, 1981: Rossel. Reprinted: 1983. Third printing: 1985.

[redacted] Jacob Neusner - biographical information [redacted]

March 1985

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: NEUSNER, Jacob (LAST) (FIRST) (OTHER)

Position to which nominated: Member, National Council on the Arts

Date of nomination:

Date of birth: 27 6 32 (DAY) (MONTH) (YEAR)

Place of birth: Hartford, Connecticut

Marital status: Married

Full name of spouse: Suzanne Richter Neusner

Name and ages of children: Samuel, 19 Eli, 17 Noam, 15 Margalit, 11

Education:

Institution	Dates attended	Degrees received	Dates of degrees
See attached resume, p. 1			

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

See attached resume, pp. 1-3

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
See attached resume, pp. 1-3		

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

1954-1960: Student, Jewish Theological Seminary of America
and 1958-1960, Student, Columbia University (Ph D: 1960)
1960-1961: Instructor in Religion, Columbia University
1961-1962: Ass't professor of Hebrew, Univ of Wisconsin Milwauke
1962-1964: Research Associate, Brandeis University
1964-1966: Ass't professor of Religion, Dartmouth College
1966-1968: Associate Professor of Religion, Dartmouth College
1968- : Professor of Religion Studies, then University Professor, Brown University

In all cases, the job was to teach and conduct scholarly research

Government experience:

List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

1978-1984: Member, National Council on the Humanities
of the National Endowment for the Humanities
(Committee assignments are listed on resume, p. 2)

Published writings:

List the titles, publishers and dates of books, articles, reports or other published materials you have written.

See attached resume, pp. 6-15

Political affiliations and activities:

List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

In the 1984 presidential election I was Rhode Island Chairman of Rhode Island Scholars for Reagan-Bush and also National Vice-Chairman of Scholars for Reagan-Bush.

I registered as a Republican in 1983, and in 1984, 1985, I am sustaining member of the Republican National Committee.

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

This is not likely to apply to Members of the National Council on the Arts.

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

I do not believe this applies to Members of the National Council on the Arts.

3. Has a commitment been made to you for employment after you leave Federal service?

Does not apply.

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

Yes, absolutely.

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None.

None

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

None.

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

None.

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

None.

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

None. I shall regard myself as bound very strictly by the Conflict of Interest Resolution of the National Council on the Arts, just as, from 1978 through Aug. 1, 1984, and from August 1, 1984 through August 1, 1985, I was bound and shall remain bind, by the equivalent resolution of the National Council on the Humanities. If I confirmed as Member of the National Council on the Arts I shall conform strictly in every way to the relevant conflict of interest rules of NEA as interpreted by the General Counsel of the Endowment.

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release March 8, 1985

The President today announced his intention to nominate Jacob Neusner to be a Member of the National Council on the Arts for a term expiring September 3, 1990. He would succeed Jessie A. Woods.

Mr. Neusner has been at Brown University since 1968 serving as a Professor of Religious Studies, University Professor and Ungerleider Distinguished Scholar of Judaic Studies (since 1982). Previously, he was Assistant Professor (1964-66) and Associate Professor (1966-68); Research Associate at Brandeis University (1962-64) and Assistant Professor of Hebrew at the University of Wisconsin (1961-62).

Mr. Neusner graduated from Harvard College (A.B., 1954) and Columbia University (Ph.D., 1960). He is married, has four children and resides in Providence, Rhode Island. He was born July 28, 1932 in Hartford, Connecticut.

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ORGANIZATION OF AMERICAN HISTORIANS

TESTIMONY OF DR. NORMAN A. GRAEBNER

Representative of the Organization of American Historians

before the

SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS

August 13, 1986

On the Nomination of John Agresto

For Archivist of the United States

I appear before you this morning as a historian of United States foreign relations and as the representative of the Organization of American Historians, the larges national learned and professional society for scholars who specialize in the history of this country. The 11,000 members of the Organization of American Historians represent the constituency which will be most adversely affected by a mediocre political appointment as the Archivist of the United States. On April 10, during the Annual meeting of the OAH in New York, the Executive Board voted unanimously to oppose the candidacy of John Agresto for U.S. Archivist.

The deep concern I express for the proper functioning of the National Archives of the United States, as perhaps the leading repository of historical documents in the world, is shared by the entire community of scholars. My retirement in Juen as the Randolph P. Compton Professor of History and Public Affairs at the University of Virginia ended 40 years of university teaching, divided among such institutions as Iowa State University, the University of Illinois, and the University of Virginia. In the preparation of books and articles during those 40 years of academic life I have used the manuscript repositories of almost all major libraries in the United States, including especially the Archives of the United States. The advice and service that I have sought from members of the National Archives staff has always been met with patience, competence, and efficiency.

My acquaintance with the National Archives of the United States goes far beyond my experience as a user. In 1968 the American Historical Association appointed me one of its first two representatives to the Advisory Council of the National Archives. The Council was created to bridge the gap between the National Archives and the scholarly world with a direct, formal exchange of views. I remained on the Council for 7 years. During those years I learned much about the operation of the National Archives, especially the magnitude of the operation with its 1900 permanent employees and its budget of almost $100 million a year, as well as the high professionalism of those who manage it. I found Dr. James B. Rhoads, the Archivist throughout my years on the Council, along with his Deputy, Dr. James O'Neill, and other administrative associates, to be professionals of the highest order. As a member of the National Archives Advisory Council I came to appreciate the significance as well as the difficulties involved in decisions regarding the preservation, classification, and accessibility of federal documents. With all its expertise and concern, the Archives administration could not always satisfy the hundreds of devoted operatives who have their own high standards of how the Archives should be managed. The effective control of such a large institution, with its large professional staff, requires thoughtful guidance and encouragement as well as a clear understanding of the problems that archivists face.

What renders the task of archival management especially troublesome is the unfortunate conflict between the private and the public interest in all archival matters, requiring a careful balance between the essential objective of preservation, which must include a reasonable protection of privacy, and the public's concern for accessibility. If all private statements and official decisions could tolerate immediate scrutiny, this tension would not exist. But the everpresent need to minimize embarrassment renders the search for balance between privacy and accessibility tedious indeed. The principles that govern such decisions are fundamental to the quality of archival management; they demand a maximum of good judgment and therefore should not be subject to political or ideological pressures.

For two reasons, it appears to me, the Archivist of the United States should represent the country's large and distinguished scholar-archival community. First, the National Archives is only one element in a national network of archives, some public and some private, that includes not only the large and important presidential libraries and the many Regional Records and Archives Centers--all part of the National Archives system--but also the generally impressive archives maintained by all the state historical societies and major universities. As the country's predominant archivist, the Archivist of the United States should have some knowledge and understanding of the country's immense archival structure. Within the National Archives itself the Archivist has available layers of expertise in making decisions regarding the retention, cataloguing, and storing of documents. Still the criteria which determine archival policy must reflect the preferences, philosophy, and experience of the Archivist simply because the Archivist is free to accept or reject the advice received from subordinates. It matters whether decisions conform to the principles established by the American archival community over the course of generations. Any departure from those principles will produce an immediate, adverse reaction not only among the professionals within the National Archives system but also throughout the American academic community.

Second, the National Archives, as an agency for preserving the nation's records and serving both public and private researchers--something that it has done magnificently throughout its history--engages in activity of an essentially non-political nature, requiring decisions untouched by the existing political environment. The tradition that the Archivists of the United States represent the academic-archival community at its best and bring to their task only the highest standards of professionalism and political detachment is a very sound one, and one that should be preserved. There is no place for external intrusion in archival matters. The National Archives of the United States gained a welcome measure of freedom from political intimidation when the Reagan administration agreed to the separation of the National Archives from the General Services Administration. That same accent on independence, and the professionalism that it permits, should determine the choice of each successive Archivist of the United States.

NATIONAL ENDOWMENT FOR THE HUMANITIES AFFIRMATIVE ACTION COMPLIANCE MATERIALS

EEOC ltr to NEH on FY'82-'86
affirmative action plan;
Jan. 11, 1982

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

January 11, 1982

Carol M. Gordon, Director
Office of Equal Employment Opportunity
National Endowment for the Humanities
Washington, D.C. 20506

Dear Ms. Gordon:

We have completed the review of the National Endowment for the Humanities' Multi-Year Affirmative Action Program Plan, FY'82 - FY'86 and the Plan for Prevention of Sexual Harassment in the Workplace and are pleased to advise you that they meet the essential requirements set forth in EEOC, MD-707 and the modifying Memorandum of June 11, 1981.

The affirmative action plan reflects your agency's efforts to identify areas of underrepresentation, establish employment goals, and develop strategies intended to eliminate barriers to equal job opportunity.

We look forward to a continuous relationship in the furtherance of our common objectives in the affirmative action program. If we can be of further assistance during this multi-year period, please let us know.

Sincerely,

Richard Dickerson, Director
Federal Affirmative Action Division
Office of Government Employment

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

26 JUL 1983

MEMORANDUM

To: Edward C. Schmults
Deputy Attorney General

From: Wm. Bradford Reynolds wBR
Assistant Attorney General
Civil Rights Division

Subject: EEOC Draft Management Directive 707A

The Equal Employment Opportunity Commission (EEOC) has sent the heads of all federal agencies "Draft Management Directive 707A," which provides instructions on the preparation of the affirmative action plans submitted annually to the EEOC. This directive requires that the plans include hiring and promotion "goals" designed to reduce "underrepresentation" of minorities and women in all employment categories. Such "goals," like any numerical selection objective defined by race or ethnicity, inevitably result in racially preferential treatment to nonvictims of discrimination. As discussed more fully in the attached memorandum to the Attorney General, these "goals" are contrary to clear Administration policy, the equal protection guaranties of the Constitution, and Title VII of the Civil Rights Act of 1964. Moreover, the EEOC is without statutory authority to impose such employment "goals" on federal agencies.

The EEOC has statutory authority under Section 717(a) of Title VII, as the statute's plain language and legislative history make clear, only to eliminate discrimination in federal employment, not to "correct" "underrepresentation" by requiring preferential treatment in the form of hiring and promotion "goals."

Further, Section 703(j) of Title VII, 42 U.S.C. § 2000e-2(j), specifically forbids precisely the action that the EEOC has taken here. This section explicitly states that nothing in Title VII may be interpreted to require any employer, including federal employers, to grant preferential treatment to any group to reduce the underrepresentation of that group in the employer's work force. Id. Since the EEOC directive requires federal employers to grant the preferential treatment of "goals" to certain groups to reduce the "underrepresentation" of that group in the agency's work force, it clearly violates the express command of Section 703(j).

Finally, the use of the proposed employment "goals" by the Federal Government would violate the equal protection rights of nonminority federal employees and applicants. Government may not engage in racially preferential treatment absent findings of prior unlawful discrimination. University of California Regents v. Bakke, 438 U.S. 265 (1978). Since the EEOC has not made any such findings of discriminatory employment practices in the federal work force, its recommended preferential employment techniques are constitutionally impermissible. Moreover, as we have argued in at least three circuit courts, the EEOC's action would be unconstitutional even if it had found such discriminatory practices, because its victim-blind "goals" would afford preferential treatment to nondiscriminatees as well as discriminatees.

Accordingly, for the reasons detailed fully in the attached memorandum, the EEOC should be advised to purge its Draft Directive of all selection "goals" and any other requirement or encouragement of preferential treatment based on race, sex, or national origin.

Attachment

Civil Rights Division

Office of the Assistant Attorney General
Washington, D.C. 20530

26 JUL 1983

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Equal Employment Opportunity Commission's Directives to Federal Agencies Requiring Preferential Employment Policies on the Basis of Race, Color, National Origin and Handicap

The Equal Employment Opportunity Commission (EEOC) has sent to you and the heads of all Federal agencies a draft Management Directive 707A, "providing instructions for agencies to use in making annual accomplishment reports of, and annual updates for, affirmative action programs for minorities and women."

While many of the requirements contained in this document are unobjectionable, // it requires agencies to engage in preferential employment practices for nonvictims of discrimination on the basis of race, color, and national origin. // Such requirements contradict the equal opportunity policies of this Administration and violate both the equal protection guaranties of the Constitution and Title VII of the 1964 Civil Rights Act. Briefs have been filed by the Justice Department in at least three circuit courts, arguing that such racially preferential hiring techniques violate the Constitution when practiced by state or local governments and violate both the Constitution and Title VII when incorporated by a court in a consent decree or judgment. *Williams* v. *City of New Orleans*, No. 82-3435 (5th Cir.) (decision of *en banc* court pending); *Bratton v. City of Detroit*, No. 80-1837 (6th Cir.) (motion of United States to intervene denied); *Segar* v. *Smith*, Nos. 82-1541, 1590 (D.C. Cir.).

A. BACKGROUND

Draft Management Directive 707A requires "that each agency submit plans designed to reduce the *underrepresentation* of groups in occupational series or categories, based upon determinations of *underrepresentation* for each occupational series/category and the setting of both *long-range goals and goals for the first year of the plan*." Page 1 (emphasis supplied). Moreover, "goal achievements are to be reported in two categories, goals reached through hiring from the outside and through internal movement." Page 2 (footnote omitted). 1/

1/ *See* text at fn. 3 and fn. 3.

Reliance on "underrepresentation" as the basis for the establishment of hiring goals, as well as the central role of the goals themselves to the agency's compliance with the Directive, is made clear throughout the document. E.g., pages 2; A-1; B-1; B-9-B-14; C-1; C-5-C-8; E-12.

Underrepresentation of members of a particular minority or gender group is not, standing alone, sufficient to conclude that an agency has discriminated in violation of the Constitution, unless the underrepresentation is unexplainable on grounds other than intentionally discriminatory employment practices. Even as a matter of Title VII law, racial or gender disparities in employment figures do not support a finding of employment discrimination if the procedures and testing used by the employer are themselves job-related.

Further, while so-called hiring "goals" are arguably not as rigid a preferential technique as quotas, any numerical objective defined by race, color, or national origin which agencies and their line managers are directed to meet, 2/ inevitably results

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2/ Indeed, the EEOC will require agency heads to indicate how he or she will hold "command/component" heads or "planning/reporting unit heads" "accountable for the success or failure of their affirmative action efforts." Page C-2. In a suggested "Statement Re Accountability," EEOC recommends that agencies adopt in their plans the following language:

> We have developed standards in the Program Management element of the merit pay and SES appraisal systems for the following top management personnel, who are thereby held accountable for successful implementation of the affirmative action program by the Head of the Agency. They, in turn, have developed such standards in the merit pay and general appraisals of those below them whom they hold accountable for such successful implementation.
>
> Planning/Reporting Unit Head (Assistant Secretaries)
>
> Meets all or almost all of the internal movement and external hiring goals of the affirmative action plan of his/her unit, except in certain mitigating circumstances, through visible support of the program and through ensuring the necessary coordination of affirmative action program activities with the necessary support activities, primarily but not exclusively in the Personnel Department, throughout the P/R unit.

(Footnote cont'd on p. 3)

in race-conscious hiring of nonvictims of discrimination. As such, they are suspect as a matter of statutory construction, and infirm as a matter of constitutional law.

B. THE EEOC IS NOT AUTHORIZED TO REQUIRE FEDERAL AGENCIES TO SUBMIT EMPLOYMENT GOALS

1. Title VII Does Not Authorize Such Action - The primary statutory basis for the EEOC's Directive is Section 717(a), 42 U.S.C. § 2000e-16, added to Title VII in 1972. Section 717(a) directs that all personnel actions affecting employees or applicants for employment in federal agencies "shall be made free from any discrimination based on race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-16(a). Section 717(b) gives the EEOC authority to enforce this provision. *Id.* at § 2000e-16(b). The EEOC must also review and approve each agency's "equal employment opportunity plan" which is aimed at "maintain[ing] an affirmative program of equal employment opportunity for all . . . employees and applicants for employment." *Ibid.* Each such plan "shall include, but not be limited to (1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential . . . ." *Ibid.*

Thus, by the statute's plain language, the EEOC has statutory authority only to eliminate discrimination in federal employment, not to "correct" "underrepresentation" through action designed to achieve racial and gender proportionality in the work force. Actions which go beyond ensuring nondiscriminatory employment practices, such as requiring preferential treatment in the form of hiring and promotion "goals," therefore exceed the EEOC's statutory mandate. 3/

2/ (Continued from p. 2)

Page E-12.

Upper and middle-level managers, whose job ratings depend in part on successful implementation of hiring goals, will be under pressure to have their hiring "numbers" meet the hiring "goals" in the agency plan.

3/ Nor does § 717(b)'s requirement of an annual submission describing the agency's "affirmative program of equal employment opportunity . . . includ[ing] but not . . . limited to" training and educational efforts indicate that "goals" can be required as part of this plan. This section simply authorizes an "affirmative program" to enhance employment skills. There is no indication that this program may include racially prefer-

(Footnote cont'd on p. 4)

Nor does the legislative history of Section 717 indicate that Congress intended to grant the EEOC more expansive authority than that reflected in the plain language of the statute. Indeed, while not entirely free from doubt, Section 717's legislative history indicates that Congress did not authorize the EEOC to impose "goals" on federal agencies. In any event, it cannot be interpreted as supporting the use of such "goals."

Congressional discussion of the provision that was to become Section 717 was limited. This absence of serious discussion or debate, however, would seem to demonstrate that this provision did not authorize the imposition of goals or quotas, in view of the debate over goals and quotas that took place concerning other parts of the bill. Another provision of the same bill (H.R. 1746; 4/ S. 2515) proposed to transfer the administration of Executive Order 11246 from the Labor Department's Office of Federal Contract Compliance (OFCC) to the EEOC. Because E.O. 11246 had been used to impose "goals" on federal contractors, the proposed transfer provoked extensive debate in both houses over the use of such "goals." 5/ In stark contrast, however, no congressman even raised the issue of quotas or goals in connection with Section 717. As was noted by Senator Williams, the Senate bill's sponsor, this "noncontroversial" provision had "not had very much debate because it was so clearly accepted at the Committee level." 1972 Legislative History at 1768 (emphasis added). If this provision had been viewed as authorizing the imposition of employment "goals," it could not have been described as "noncontroversial" and undoubtedly would have sparked debate and opposition similar

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3/ (Footnote cont'd from p. 3)

ential selection and promotion "goals," especially when read in the context of Section 717 as a whole. The annual EEO plan is simply another enforcement tool by which the EEOC prevents the discrimination outlawed in Section 717(a). The components of this plan are thus defined, and delimited, by the Section 717(a) substantive provision.

4/ The House ultimately passed a substitute bill, H.R. 9247, which did not contain a provision concerning federal employment discrimination. However, the legislative history of H.R. 1746 is relevant because its federal employee section is similar to that of the Senate bill which became Section 717.

5/ See, e.g., Legislative History of the Equal Employment Opportunity Act of 1972, 92nd Cong., 2nd Sess. at 128, 189, 199, 202, 211, 222, 235, 245, 260-309 (House debate); id. at 915, 921, 944, 965, 1002, 1041-48, 1072, 1101, 1325, 1713-14 (Senate debate).

to that surrounding the proposed OFCC trahsfer. The absence of *any* debate or mention of preferential treatment therefore suggests that no one in Congress contemplated that the EEOC could impose such controversial "goals" pursuant to Section 717. 6/

Moreover, the Committee Reports in both houses and statements of congressmen 7/ -- including the individual sponsors of the House and Senate bills 8/ -- clearly reflects that the statute was intended simply to ensure nondiscrimination and equal opportunity, not to grant preferential treatment or achieve racial balance. For example, the Committee Reports quote then-President

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6/ It should also be noted that virtually all of those in both Houses who spoke in opposition to the proposed transfer of E.O. 11246 enforcement authority to EEOC believed that the OFCC's use of goals was (at least probably) contrary to the dictates of Title VII. Those who opposed the OFCC's "goals and timetables" objected to the transfer because they believed the EEOC would use its new authority to impose quotas generally. *See* 1972 *Legislative History* at 287 (remarks of Rep. Ashbrook); *id.* at 305 (remarks of Rep. Shoup); *id.* at 309 (remarks of Rep. Varick); *id.* at 128 (remarks of Rep. Green). Those who supported the concept of "goals" feared that the transfer to the EEOC might foreclose their future use because of their view that Title VII prohibited imposition of preferential measures. *See id.* at 915 (remarks of Sen. Saxbe); *id.* at 222 (remarks of Rep. Steiger); *Ibid.* at 204 (remarks of Rep. Erlenborn). The proposal to transfer OFCC's authority to the EEOC ultimately failed in both Houses. It seems doubtful that the Congress which, in affirmatively preventing EEOC from administering an OFCC-type "goals" program, reflected serious doubts concerning the agency's authority to enforce such a program, would then, without comment, authorize the EEOC to impose similar goals on federal agencies.

7/ *Id.* at 673-674 (remarks of Sen. Humphrey) ("to eliminate discrimination in federal employment"; "the obligation of the Federal Government to make all personnel actions free from discrimination"); *id.* at 967 (remarks of Sen. Byrd) ("prohibition against discrimination"; "the rectification of . . . discrimination based on race."); *id.* at 298-299 (remarks of Rep. Mink) ("There is no reason why persons working in the public sector should not enjoy the same protection and rights as those in the private"); *id.* at 269 (remarks of Rep. Fauntroy) ("mandating nondiscrimination requirements in Federal employment"; "nondiscrimination requirements in Federal employment.")

8/ 1972 *Legislative History* at 1726-27, 1768 (remarks of Sen. Williams) ("personnel actions of the U.S. government shall be made free from discrimination"; "to see that job discrimination in the Federal service is brought to a halt."); *id.* at 199 (remarks of Rep. Perkins) ("enforce the obligations of equal employment opportunity").

Nixon's statement that "discrimination of any kind based on factors not relevant to job performance must be eradicated completely from Federal employment" 9/ and refer to the statutory purpose of "nondiscrimination" and "equal employment opportunity." 10/ Further, the Reports demonstrate that Section 717 was designed to extend the coverage of the 1964 Civil Rights Act, a purely "nondiscriminatory" statute, to federal employees. 11/

There is some legislative history, however, which arguably supports the proposition that Section 717 authorizes the use of racially preferential goals. Statements by two legislators, one from each House, arguably indicate that they viewed the statute's purpose as requiring federal "affirmative action" programs to achieve racial and gender proportionality in the federal work force. 12/ Also, the Committee Report for H.R. 1746 states that

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9/ *Senate Committee on Labor and Public Welfare Report*, *id*. at 422; *House Committee on Education and Labor Report*, *id*. at 82-83.

10/ *Senate Committee Report*, *id*. at 421-423 ("nondiscrimination in the Federal government"; "employment discrimination in the federal government"); *House Committee Report*, *id*. at 82-83,92 ("prohibition against discrimination"; "goal of the elimination of discrimination in Federal employment"; "the nondiscrimination provision of subsection (a)"). Note that both Committee reports state that the federal enforcement agency should attempt to correct systemic discrimination, not just isolated intentional discrimination by individual supervisors. *House Committee Report*, *id*. at 84-85; *Senate Committee Report*, *id*. at 423-24 (citing *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971)).

11/ The House Committee Report states, "there can exist no justification for anything but a vigorous effort to *accord federal employees the same rights and impartial treatment which the law seeks to afford employees in the private sector.*" *Id*. at 83. The Senate Committee Report states that the "bill expands the coverage of Title VII in the following respects" and then lists the extension to federal employment. *Id*. at 417, 421-426.

12/ Representative Badillo stated:

> Although the Government must have the authority to bring an *end to the bias and prejudice* which currently exists in many areas of personnel policies in the private sector, *it must also abide by the same principles and achieve the same goals and quotas* which are established for private industry and labor. (p. 288)

(Footnote cont'd on p. 7)

"it is expected [that] . . . federal agencies will continue their commitment to affirmative measures such as recruiting

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12/ (Footnote cont'd from p. 6)

> It is time for the U.S. Government to follow the principle of employment of Spanish-speaking Americans commensurate with their percentage of the total population. Tokenism is clearly unacceptable to the Spanish-speaking community. (p. 289)
>
> The efforts of the U.S. Civil Service Commission to recruit Spanish-speaking persons must be significantly accelerated and the continued low representation of Spanish-speaking persons in the Federal service clearly indicates that considerably stronger efforts must be made.
>
> We are not making extraordinary demands but simply ask that the Federal employment of Spanish-speaking persons shall be proportionate to our percentage of the total population of the United States and that we be afforded the opportunity to serve at all levels of government service, including management and supervisory positions.

1972 Legislative History at 290.

> Senator Cranston stated that the statute would:
>
> First. Put the Congress on record in favor of maximum affirmative action under Civil Service Commission direction to provide Federal jobs and real advancement opportunities for minority groups in Federal service. At the present time, the CSC derives its authority to act against discrimination from executive order.
>
> Second. Specifically charge the Civil Service Commission with the responsibility to require all agencies to draw up affirmative action plans and see that they are carried out.
>
> * * *
>
> Mr. President, the Federal Government must be a model of equal employment opportunity.
>
> This requires that Federal agencies make a special effort to employ and promote qualified

(Footnote cont'd on p. 8)

and training, *specialized hiring programs*, . . . and the appointment of EEO officers." 1972 *Legislative History* at 85 (emphasis added). However, when read in context, this language does not support the use of goals or preferential hiring. The "affirmative action" discussed seems to refer simply to those nondiscriminatory affirmative steps, such as recruiting and training, designed to develop employment skills and widen the minority applicant pool, rather than to any preferential selection procedures. *13*/ The legislators presumably believed that

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12/ (Footnote cont'd from p. 7)

> *minority persons according to their relative proportions in the population of the area surrounding agency field offices*. Although statistics available to me show that there has been some recent improvement, the situation is by no means satisfactory. In many instances, Federal minority employment remains disgracefully low. There is a national pattern of disproportionately low employment pattern of certain minorities and a definite pattern of exclusion of minorities, when they are employed, from the higher, better-paying Government positions.
>
> *We must provide meaningful opportunities for advancement, training, and education in service in order to qualify minority group persons for the higher and better-paying jobs, as well as to open up entry level jobs*.
>
> * * *
>
> My amendment, then, adds to Title VII of the Civil Rights Act a new section 717 making clear the obligation of the Federal Government to insure *that all personnel actions are free from discrimination based on race, color, sex, religion, or national origin*. The Civil Service Commission *is mandated under* this title to enforce an affirmative equal employment opportunity program in the Federal Government. *Id*. at 1744-45, 1749.

13/ Sen. Cranston, for example, states that the bill would provide:

> . . . meaningful opportunities for *advancement*, *training and education* in service *in order to qualify minority group* persons for the higher and better-paying jobs, as well *as to open up entry level jobs*. *Id*. at 1745.

(Footnote cont'd on p. 9)

these steps would result in a minority work force percentage roughly equal to the percentage in the total population. Any more expansive interpretation would be at odds with the views of the Committee Reports and other Congressmen cited above. At a minimum, the total absence of any definition of "affirmative action" or "specific hiring programs" significantly undermines the argument that these isolated remarks evinced a congressional intent to authorize preferential selection procedures.

Also, the Senate rejected an amendment offered by Senator Ervin which would have prohibited the federal government from requiring quotas or goals. This does not provide support, however, for the action taken by the EEOC here. Even assuming that rejection of the Ervin amendment indicates some senatorial opposition to the banning of all racially preferential treatment, it clearly does not indicate any opposition to the prohibition of nonremedial preferential treatment under Title VII.

13/ (Footnote cont'd from p. 8)

Also, it required "the Federal Government to insure that all personnel actions are free from discrimination based on race, color, sex, religion, or national origin" and to strengthen its program to eliminate discrimination in Federal employment." *Id.* at 1749-50.

Similarly, Rep. Badillo referred to the need for "[t]he efforts of the U.S. Civil Service Commission to recruit Spanish-speaking persons [to] be significantly accelerated. . . ." *Id.* at 290. He further said that the bill would:

> grant the Federal Government much needed enforcement powers to end discriminatory employment practices and to improve, and hopefully, reinforce Federal efforts to prevent bias in employment. . . . I believe the time is long overdue for the Federal Government to put its own house in order in terms of ending its own discriminatory employment practices.
>
> * * *
>
> I speak not only of increasing employment opportunities for Spanish-speaking Americans but also in ending certain requirements or features of personnel policies which discriminate against Spanish-speaking persons. For example, physical height requirements have often presented unnecessary barriers to the employment of Spanish-speaking persons in many agencies. *Id.* at 288-289.

The two Senators who spoke in opposition to the Ervin amendment did so on the grounds that it would end the OFCC's use of goals and/or judicially ordered Title VII quotas to remedy proven discrimination. 14/ No one opposed the amendment on the ground that it would limit nonremedial goals or quotas imposed by the EEOC pursuant to Title VII. Indeed, there is little, if any, indication that anyone thought the EEOC had the power to require such preferential measures. Thus, defeat of the Ervin amendment does not imply congressional approval or acceptance of the type of EEOC goals at issue here. 15/

On the whole, therefore, the legislative history indicates that Section 717 was not intended to authorize the imposition of employment goals on federal agencies. The few indications to the contrary are ambiguous and cannot overcome the contradictory legislative history and and the statute's plain language. Surely if Congress had intended to take the controversial step of authorizing the EEOC to require preferential measures such as goals, it would have expressed that intent much more clearly in both the statute and the legislative history.

2. The Minority Recruitment Program Does Not Authorize the EEOC's Action - The EEOC also relies on the Minority Recruitment Program section (Section 310 of Title III, Pub. L. No.

14/ Senator Javits opposed the Amendment on both grounds. Id. at 1046-1048). Senator Williams limited his objection to the issue of restricting judicial remedial power. Id. at 1072. Both Senators were incorrect in their view that judicial remedial authority would be affected because such authority is governed solely by Section 706(g) and the Ervin amendment implicated only the substantive provision Section 703(j).

15/ The Senate also rejected a second Ervin amendment which would have extended Section 703(j)'s coverage to executive orders and statutes other than Title VII. Id. at 1714.

In the House, Representative Dent proposed an amendment to H.R. 1746 which would have prohibited the EEOC from requiring preferential treatment under the OFCC program. Because the House passed a substitute bill that left the OFCC under the Labor Department, this amendment never came to a vote. The House debate clearly reflects, however, unanimous agreement that Title VII does not permit racially preferential treatment. E.g., id. at 190 (remarks of Rep. Dent) ("[s]uch a prohibition against the imposition of quotas or preferential treatment already applies to actions brought under Title VII."); id. at 204 (remarks of Rep. Hawkins) ("some say that this bill seeks to establish quotas . . . . Not only does Title VII prohibit this, but it [prohibits] . . . any individual white as well as black being discriminated against in employment.") Not a single contrary view was expressed.

The EEOC also relies on the Minority Recruitment Program section (Section 310 of Title III, Pub. L. No. 95-454, 5 U.S.C. § 7201) of the Civil Service Reform Act of 1978 (Pub. L. No. 95-454, issued pursuant to 5 U.S.C. § 901 *et seq.*) as authority for requiring affirmative action goals (pg. 1). This statute, however, clearly does not authorize the imposition of such racially preferential measures.

The Minority Recruitment Program directs Executive agencies to conduct a "continuing program for the recruitment of members of minorities for positions in the agency . . . in a manner designed to eliminate underrepresentation of minorities in the various categories of civil service employment . . ." and is to be implemented by the Office of Personnel Management (OPM). 5 U.S.C. § 7201(c). The EEOC is to establish guidelines for the programs, make determinations of underrepresentation and transmit these determinations to the involved agencies, OPM and Congress. 5 U.S.C. § 7201(d). OPM must forward an annual report to Congress on this matter, including the Section 717 EEO plans. 5 U.S.C. § 7201(e).

The provision's title and terms demonstrate that this provision is simply a *recruitment* program, which in no way authorizes preferential selection. The legislative history further shows that "affirmative action" under the provision is strictly limited to recruitment and does not allow preferential selection. For example, the Conference Report explicitly states that "[i]t was the understanding and intention of the conferees [that this section] . . . *is solely a recruitment program, and not a program which will determine and govern appointments.*" S. Rep. No. 95-1272, 95th Cong. 2d Sess. 139, 145 (1978) (emphasis added). Similarly, Congressman Garcia, sponsor of this section, stated that it "will strengthen the affirmative action program of the civil service, by instituting statutes which enforce a meaningful outreach and recruitment program *while in no way even implying hiring quotas.*" 124 Cong. Rec. H. 11826 (daily ed. Oct. 6, 1978) (emphasis added).

Moreover, other provisions of the Civil Service Reform Act expressly require that personnel decisions be made solely on the basis of merit (5 U.S.C. § 2301(b)) and prohibit preferential treatment "for the purpose of improving or injuring the prospects of any particular individual or category of individuals" (§ 2302(b)(1)); *see* § 2302(b)(6)). 16/ In addition, the House specifically rejected an amendment to this provision proposed by Congresswoman Spellman to grant women promotional preferences. 124 Cong. Rec. 28744. Finally, Congressman Collins

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16/ With the caveat that this provision does not lessen any EEO efforts under Section 717. § 2302(d).

introduced an amendment that would have specifically prohibited preferential treatment. 124 Cong. Rec. 29108. He withdrew this amendment before it could be voted on. Id. at 29110. All those who debated the amendment, however, agreed that the proposed Civil Service Commission set-aside plan at which it was directed was bad policy or unconstitutional or both. Id. at 29108-10.

C. THE EEOC'S PROPOSED GOALS VIOLATE BOTH TITLE VII AND THE CONSTITUTION

1. Title VII - Section 703(j) of Title VII explicitly states: "Nothing contained in this title shall be interpreted to require any employer . . . subject to this title to grant preferential treatment to any individual or to any group because of the race . . . of such individual or group on account of" a racial imbalance in the employer's work force. 42 U.S.C. § 2000e-2(j). The EEOC has plainly engaged in precisely the action which Section 703(j) specifically forbids. They have interpreted Section 717 of Title VII to require federal employers to grant preferential treatment in the form of "goals" to a racial group on account of a racial imbalance in the federal work force. It thus seems clear that the EEOC's requirement of racial preference to correct imbalance or "underrepresentation" is expressly prohibited by Section 703(j).

The legislative history even more fully demonstrates the illegality of the EEOC's action. This history shows that Section 703(j) was enacted in anticipation of precisely the action taken by the EEOC here. Opponents of Title VII repeatedly expressed that federal enforcement "bureaucrats" such as the EEOC would equate unlawful discrimination with the existence of underrepresentation in a work force and thus require employers to correct this "discrimination" through preferential treatment to achieve racial balance. United Steelworkers v. Weber, 443 U.S. 193, 220 (1979); id. at 231-232 (Rehnquist, J., dissenting). To put these wholly unwarranted fears to rest, Title VII's supporters added Section 703(j) to make it absolutely clear that underrepresentation would not constitute a substantive violation and thus could not serve as the basis for corrective action by a federal enforcement agency. Id. Thus, the 1964 Congress precluded the very action which EEOC has taken here by enacting a provision specifically prohibiting it.

The fact that Title VII (and thus Section 703(j)) as originally enacted in 1964 applied to private, but not federal, employers is without significance. Section 703(j) draws no distinction between federal and private employers but applies to "any employer . . . subject to this title." 42 U.S.C. § 2000e-2 (emphasis added). The Justice Department and other federal agencies are now as much "employer[s] . . . subject to [Title VII]" as those in the private sector, and Section 703(j) applies with equal force to them. 17/ Because the Equal Protection Clause creates "personal rights," "guaranteed to the individual," its safeguards

b. Finally, the Equal Protection Clause, as we have argued in *Williams*, *Bratton* and *Segar*, also prohibits federal agencies from establishing racially preferential employment "goals." It is well settled that "all legal restrictions which curtail the civil rights of a single racial group are immediately suspect" and that "courts must subject them to the most rigid scrutiny." *Korematsu* v. *United States*, 323 U.S. 214, 216 (1944). *See, e.g.*, *Shelley* v. *Kraemer*, 334 U.S. 1, 22 (1948); *Missouri ex rel. Gaines* v. *Canada*, 305 U.S. 337, 351 (1938). That the proposed Directive would disadvantage nonminority employees rather than a "discrete and insular minorit[y]" (*United States* v. *Carolene Products Co.*, 304 U.S. 144, 153 n.4 (1938)) is without constitutional significance. 18/ The Equal Protection Clause creates "personal rights," "guaranteed to the individual," its safeguards "cannot mean one thing when applied to one individual and something else when applied to a person of another color. If both are not accorded the same protection, then it is not equal." *Regents of the University of California* v. *Bakke*, 438 U.S. at 265, 289-290 (1978) (opinion of Powell, J.). Accordingly, when a person is classified by government on the basis of race or ethnic origin, "the burden he is asked to bear on that basis [must be] precisely tailored to serve a compelling governmental interest. The Constitution guarantees that right to every person regardless of his background." *Id.* at 299; *see* *Shelley* v. *Kraemer*, *supra*; *Missouri ex rel. Gaines* v. *Canada*, *supra*, 305 U.S. at 351; *Fullilove* v. *Klutznick*, 448 U.S. 448, 480 (1980) (plurality).

Application of this standard here compels the conclusion that the use of racially preferential employment "goals" would impermissibly infringe the equal protection rights to nonminority

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17/ Moreover, it can be argued that § 2000e-16 itself invalidates the EEOC's proposed action. This section's prohibition against discrimination, by its literal terms, would bar the EEOC's race-conscious selection procedure. Such an interpretation would run contrary to the analysis used in *Weber*, but not its precise holding. *Weber* held that the sections of the *1964* Act barring private discrimination did not proscribe discrimination in favor of blacks. *Weber* therefore is not controlling on whether the *1972* statutes and legislative history permit "reverse discrimination."

18/ As Justice Powell observed in *Bakke*, discreteness and insularity have "never been invoked in [Supreme Court] decisions as a prerequisite to subjecting racial or ethnic distinctions to strict scrutiny." *Bakke*, *supra*, 438 U.S. at 290 (opinion of Powell, J.).

federal employees and applicants. The government has no permissible, much less compelling, interest in pursuing such employment "goals."

Government has no permissible interest in providing preferential treatment to members of one group on the basis of their race or ethnic origin. Bakke, supra, 438 U.S. at 307; Loving v. Virginia, 388 U.S. 1, 11 (1967). It does have a legitimate and substantial interest in remedying the injuries suffered by identified victims of illegal discrimination. Bakke, supra, 438 U.S. at 307-309. However, the government obviously possesses this interest only if it has first found that such unlawful discrimination has occurred.

> We have never approved a classification that aids persons perceived as members of relatively victimized groups at the expense of other innocent individuals in the absence of judicial, legislative, or administrative findings of constitutional or statutory violations. See, e.g., Teamsters v. United States, 431 U.S. 324, 367-376 (1977); United Jewish Organizations, 430 U.S. at 155-156; South Carolina v. Katzenbach, 383 U.S. 301, 308 (1966) * * * Without such findings of constitutional or statutory violations, it cannot be said that the government has any greater interest in helping one individual than in refraining from harming another. Thus, the government has no compelling justification for inflicting such harm. Bakke, supra, 438 U.S. at 307-309.

The EEOC has not made, and does not purport to have made, any such findings of discriminatory employment practices in the federal work force. The basis for their action is minority underrepresentation which, as shown above, clearly does not by itself provide an adequate basis for a finding of illegal or unconstitutional discrimination. The EEOC does not assert that such underrepresentation violates the Constitution or any civil rights statute. Nor does it give any indication that this underrepresentation stems from any discriminatory employment practice. Thus, the proposed "goals" cannot possibly further any remedial interest; there is nothing to "remedy." Rather, the EEOC goals are designed solely to achieve "balance" in the federal work force; such "discrimination for its own sake" is forbidden by the Constitution. Bakke, supra, 438 U.S. at 307.

Moreover, even if the EEOC had found discriminatory federal employment practices, the use of class-based racially preferential measures such as goals would still be invalid because such measures necessarily afford preferential treatment to those who have not been victimized by such illegal practices.

As the Justice Department has argued in the three appellate cases cited above, the compelling government interest in remedying past discrimination will justify a class-based infringement of the legitimate interests of innocent third parties only to the extent necessary to restore proven discriminatees to the position they would have occupied in the absence of discrimination. The interest in fully vindicating these discriminatees' legal rights by restoring them to their "rightful place" in the work force warrants imposition of a remedy calling for a "sharing of the burden" by nonminority employees.

The EEOC's employment "goals," however, are victim-blind: they would embrace without distinction nonvictims as well as victims of the unlawful discrimination. They would thus accord preferential treatment to persons having no "rightful place" vis-a-vis nonminority federal employees. The Government has no compelling interest in preferring such persons' at the expense of innocent third parties. Thus, the use of racially preferential "goals" by the Federal Government is unconstitutional.

CONCLUSION AND RECOMMENDATIONS

EEOC Directive 707A contravenes the policies of the Administration as well as constitutional and statutory principles While vigorous recruitment and outreach efforts, together with training and counseling efforts, designed to open employment opportunities to minorities is to be encouraged, the EEOC is seeking to foster impermissible preferential employment practices.

EEOC should be advised to rewrite its draft Directive 707A so that it encourages recruitment, outreach, and training, and is purged of any requirement or encouragement of preferential treatment based on race, sex, or ethnic origin.

W. Bradford Reynolds

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: Edward C. Schmults
Deputy Attorney General

NEH General Counsel Memorandum
on compliance with EEOC goals
and timetables; Dec. 30,1983

NATIONAL ENDOWMENT FOR THE HUMANITIES
WASHINGTON D.C. 20506

December 30, 1983

MEMORANDUM

TO : Those Listed Below

FROM : Wendell L. Willkie

SUBJECT : NEH Equal Employment Opportunity Plan for EEOC; Use of Numerical Goals in Employment Practice

Pursuant to EEOC Management Directive 707A, each federal agency is required to submit annually an equal employment opportunity or affirmative action plan by December 31. The Department of Justice has recently taken the position that while many of this directive's requirements are appropriate, that EEOC has nonetheless exceeded its authority by effectively seeking to require agencies to engage in preferential employment practices based on race, color, national origin and sex (even in the absence of any record of discrimination). Justice does not object to the EEOC requirement that each agency provide statistics categorizing employees by race, color, origin and sex. EEOC further, however, requests each agency to provide indices of underrepresentation of certain protected classes (based, for example, on race and sex) and to state certain numerical goals to be implemented in an agency's hiring practices. In so doing EEOC is, according to the Justice response to the EEOC directive, acting outside its delegated mandate, which is to eliminate discrimination in federal employment, not to "correct" "underrepresentation," which, alone, can not be taken as evidence of discriminatory employment patterns. The imposition of hiring goals to correct such presumed underrepresentation would inevitably result in making characteristics such as race or sex a factor in hiring practices, especially as agency heads are called upon by EEOC to make the realization of such goals a criterion in the evaluation of agency supervisors.

In reviewing the legislative history empowering EEOC to eliminate discrimination in federal employment, the Justice Department interprets the requirement of "affirmative program of equal employment opportunity" as at most intending nondiscriminatory affirmative steps such as recruiting and training, outreach and counseling, designed to develop employment skills and widen the minority applicant pool. Congress did not intend to require preferential hiring based on such criteria; certainly this was not the legislative intent in the absence of any established pattern of discrimination.

In its own equal employment opportunity plan, the Justice Department reaffirmed a commitment to equal employment opportunity but refused to provide information as to "underrepresentation," or to set forth numerical hiring goals, stating that notwithstanding the best intentions goals inevitably become quotas, resulting in discriminatory hiring which was not only wrong but also contrary to the letter and spirit of the 1964 Civil Rights Act and the Constitution. It was stated that in the absence of goals minority representation at Justice had in fact increased. The Justice plan stated the desirability of a pluralistic work force and reported increased recruitment efforts among Special Emphasis Program groups, followed by a nondiscriminatory merit selection process. As a result of such efforts minority and female representation had increased since 1980 exceeding the figures for the federal and civilian work force at large.

In addition to the internal policy statement, the Justice plan included work force profiles for each bureau, an analysis of barriers to hiring and advancement in each bureau (with a statement of various measures to overcome these barriers) and an action plan for prevention of sexual harassment.

EEOC credited these measures but rejected the Justice plan as inadequate for failure to provide underrepresentation indices and numerical hiring goals. EEOC argued that Title VII doesn't preclude the use of such goals to eliminate underrepresentation in light of the Supreme Court decision in Weber; that EEOC is charged with responsibility for enforcing civil rights in federal employment; that its management directive requiring such affirmative action plans was not objected to by Justice or other federal agencies when initially proposed during the requisite comment period.

My own view is that EEOC has probably exceeded its statutory mandate in seeking underrepresentation indices and a commitment to numerical goals in hiring. While others may differ, this does represent the view of the Attorney General of the United States, whose position on legal issues is, simply speaking, dispositive for other agencies. We are otherwise, of course, required to comply with the EEOC directive. As with Justice, the statistics would suggest that minorities and women are not in fact, generally speaking, underrepresented at NEH. The issue presented, therefore, is how NEH responds to EEOC. In my view we are obliged to be straightforward and clear about our recruitment and hiring policies and to pledge our commitment to provide employment and advancement opportunities without regard to race, creed, color, or sex.

TO: Geoffrey Marshall
John Agresto
Victor Loughnan
Carol Gordon

cc: William J. Bennett

NEH Advisory Council discussion
of Chairman's affirmative action stance; Feb. 16,1984

We asked them to talk about significance in terms of the proposals that come in to the particular division, and we had some very interesting memoranda on that. If the Council members, or any Council member, would like to see any of these, we would be happy to pass them along to you. It has helped my thinking, and I would hope, as we move along -- I do not know that I can say next Council meeting or the one after -- we might try to prepare a paper on this whole question of significance for discussion by the Council. I just wanted to report that. Yes, Anita.

MS. SILVERS: I just want to make a request to -- that such a paper be prepared or at least the Council lead to that discussion -- because I think that kind of discussion, I hope in public, is the sort of discussion that would convey to the public the ---

CHAIRMAN BENNETT: Right. Right. The kind of pattern which I have in mind is something like what we will have this morning with the paper on the review process. Here is our thinking. What does the Council think? And we can go back and work on it as people see fit. But it will be quite public. Thank you. John, did you have anything?

MR. AGRESTO: No. Nothing to add to that. Thank you.

CHAIRMAN BENNETT: Any other Council members who would like to speak? Mary Beth.

MS. NORTON: Mr. Chairman, I would like to raise a question on the letter you wrote to the EEOC. We do have a copy of it in our folder this morning because it was printed in "Insight." I was upset about the letter for three reasons. I wanted to raise it in the public session because I thought the Council should talk about it. I would very much like to list my three reasons and like to have some responses from you about.

The first reason I was upset about it was something that the Council has often spoken about and that is our lack of prior knowledge of a statment like this on your part. It strikes me that you have committed the agency to an important position without letting the Council know that you were going to do it in advance. I am not saying that you should ask for our advice, but I did not appreciate reading about it in the newspapers instead of having at least some knowledge of it in advance. Of course, I would have preferred to have the Council consulted, but even if it was not proper to consult the Council at least we could have been informed of it. And I know that this issue has been raised over and over again here around this table by other Council members about other issues. I felt it particularly keenly in this instance.

The second has to do with your -- the way -- your refusal, indeed, to comply with a Federal policy. Now, the political implications of that refusal, it seems to me, that it aligns the agency with a position that is identified with a particular political point of view, and it has politicized the agency in a way that I am distressed about. I think that it has very much hurt the image of NEH, at least in the academic circles that I am active in, and I felt that since it was a refusal to comply with what has been a standard Federal policy, it is even more a substantive reason why the Council should have been consulted before you did it.

And, last, but not least, as you probably anticipate, I totally disagree with the position that you took in the letter. That is my personal belief. I agree that in an ideal world we would all be color and sex blind, but if as good inter-disciplinary humanists we pay even slight attention to current social science research on the issues of race and sex and the way that they influence hiring practices and promotion practices in the real world, we discover that every bit of social science research indicates that the world out there is not an ideal world and that there are significant differences in the way men and women are evaluated when they perform jobs and when they are applying for positions. And, also, that there are differences in the way whites and members of minority groups are evaluated when they are applying for that same position, for those same positions.

And I would just call to your mind a study that was done recently that I am sure you are familiar with in which a couple of researchers sent out to academic departments looking to hire -- sent out precisely the same resume to, I think, it was 100 randomly selected departments. In one instance, the person was identified as a female. In another instance, the person was identified as a male, but the biographical facts were precisely the same. What came back was -- the response was that the man could be hired as high as the associate professor level but that the woman would be hired as an instructor.

Now, I must say, with all due respect, that with the exception of the Acting Division Director's appointment we made yesterday, there are no women in top policymaking positions in this Endowment and that applies to members of minority groups as well. Therefore, I think that it is, shall we say, inadvisable for you to be somewhat holier than thou, as I feel you were in the letter that you wrote to the EEOC.

CHAIRMAN BENNETT: Okay. Let me respond briefly and maybe elaborate further if you want discussion of this. In terms of informing you, I do not think it is, or has been, the policy of this agency to inform the Council of its particular policies on hiring. We do not inform you about some 30 or 40 or 50, probably, reports that we send to other agencies. This is not a matter normally presented to the Council for its advice, for judgment, beforehand. It is an administrative matter having to do with the hiring of people at the agency, not a matter of policy of the Endowment in terms of its grant giving activity.

Second, my refusal to comply was a refusal to comply in part. I provided that information which I felt I could in good conscience. I did not supply the information that I felt I could not supply in good conscience.

You accused me of politicizing the agency. This was not a situation that I sought. I did not call up EEOC and say, "Tell me to do something because I am wanting this opportunity." I had to either comply or not. It is my view that to have complied would have been to politicize the agency, though it would have been to politicize it in a way that people are now familiar with. That is, it would have been to politicize the agency in a rather conventional politicized way which is accepted by a large number of people in this society, in academic society, probably not as large a number in the larger society. But it would have been politicized just as much. I had no choice but to choose. I had to do one thing or the other.

Let me suggest, in response both to this point and to the first point, I do not think that anyone should be surprised about my response. I have been as clear as possible, I think, on this issue. I wrote a book on this issue. I expressed to the Council in February, the first Council meeting that I appeared before you, that I would not discriminate on the basis of race, sex, religious, national origin, and the like. That means I will not discriminate. That means I will not give somebody three points for being a woman or black or white or male or whatever. Not to discriminate means not to discriminate.

I can only presume from your third point that you are accusing me of discriminating when you talk about the Division Directors. If you think I have, I suggest you make a case or urge someone else to make the case if they think they have been discriminated against.

In terms of all social science research, I think you are flatly wrong. Again, I wrote a book on this. We can have a seminar if you would like. You and I can discuss all the research, and you will find, as one can always find in the social sciences, positions and findings that will support any position. But it is simply not true that all social science research goes one way on this, whatever the value of social science research.

Again, my position -- I am now responding to all three points -- ideal worlds and the like -- we all seek a world in which people will not discriminate, will not be color conscious, race conscious. It is my view the way to get to that world is to act on that principle and that is the principle on which I have acted.

Yes, Frances.

MS. RHOME: I guess I am pleased that you brought the subject up so that we could discuss it, because I read of your stand in the headlines of the Indianapolis Star at breakfast. And the way that it was reported in the newspaper was that you were taking a stand against affirmative action and its processes.

I certainly believe that you have absolutely every right to your own opinions, and I would also see that you are bound by certain Federal regulations in administering your office and also the fact that the Council did adopt some three years ago an affirmative action policy in that regard. And that we have been following that as we have been administering our program to those persons who are bringing in proposals and making every effort to assure that minorities and women are included in projects and things that are going forward.

I guess I have to agree that I have difficulty with this because you are a prominent person and because NEH is a prominent person, to take a negative stand, as this was inferred, was brought about in the papers, was difficult. I do know -- as you know, I have been administering programs in this line for some 15 years, and I know the regulations and I know the laws upside down, backwards, and forwards, and I do know that some agencies have been oversealous in requesting statistical information. But I also know that in the implementational process, as the regulations were developed, that it was required that statistical information be given as a start to see whether or not there was discrimination.

Since I have had to furnish that stuff for 15 years, and found it a terrible headache, I have also discovered that by so doing it it did bring up some factions that I had not been aware of in our own institution such as finding salary inequities that most of us did not believe were there. So, it is a process to follow.

So, I was concerned very much from the fact that the word "quota" was used. There is no place in any regulation that requires quotas. President Nixon himself issued an Executive Order, and it is still in effect, that there will be no quotas and that there is not to be preferential treatment on the basis of sex. The only time that quotas are imposed is when there has been a court case in which the court itself has found that discrimination did exist and, therefore, imposed a remedy for the correction of that.

So, I do have some problem with it. Somehow, I wish it had not been so public. I do, indeed, wish we would have discussed it together.

CHAIRMAN BENNETT: Well, if we had discussed it, again, I think we would have not been doing what was normal as typical. However, I have to tell you that if we had discussed it I would have come out the same way because this is a matter of fundamental principle and fundamental belief for me. I think the publicity was, in fact, good. I believe with Justice Brandeis that sunlight is the best disinfectant. Let's be quite public about acts like this. Let's not be covert, and let's be judged on the basis of public opinion and arguments that people can make. I understand that you think it was negative. I think it was positive.

My refusal to comply, however, Figueroa -- I have to correct you -- was not a refusal to comply with providing certain statistics. I provided the facts that I was asked to submit. I was, however, also asked to submit a plan of goals of hiring by race and sex, and I regard that not as a headache but as an invidious and degrading exercise in which I will not participate then, now, or in the future.

If you think there is discrimination at this agency, salary inequities between people of different races or sexes, that should be brought to my attention immediately. I also did not refuse, nor do I reject the notion of, affirmative action. The original notion of affirmative action, I think, is a sound one. What I reject and what I refuse to comply with was the insistence in this -- you are welcome to look at it -- 30-page management directive from EEOC that asks me to supply indices of under-representation as if there are some assumptions of some proper mixture of race and sex in our work force. And I also refuse to submit a plan of goals, which I think, frankly, is a euphemism for quotas.

In terms of the law, there is disagreement. It was the position of the Justice Department that the EEOC had exceeded its authority in this matter. So, we are not alone. Other comments? Mr. Neusner.

MR. NEUSNER: I think it is a very positive contribution to allow the Council to discuss the matter, as Mary Beth has done. I would like to address three issues briefly.

First of all, Council role. The Council is not the Board of Directors of the NEH. Its role has been thought about a great deal by many of us over the years and with successive chairmen. We are a board of advice and review. The one legal power we have is that the Chairman may not make a grant in excess of a given figure, which I believe is $30,000, without a Council recommendation. That is the work that we do do. It is very seldome that the Council has discussed a wide range of policy issues, and I do not think there is a legitimate complaint on that score.

Secondly, I think it would be valuable for the Council to express an opinion, to assess the majority and minority views on these questions. I would suggest, because you have brought it up, Mary Beth, that you offer a resolution. Let it be debated in terms that you want it debated in, and let's see how people think.

Thirdly, I think it is unfortunate that we should be discussing mainly a negative issue when there are positive things which this administration of the Endowment has been doing and is proposing to serve minority constituencies, for example, and to do good things where, within the ideals of principles of this Chairman, these things can and should be done.

Later on today, we will be having, I believe, very soon, in fact, concrete proposals on educational programs, fellowship programs, which will serve black colleges, for one thing, and no one is claiming that this is discrimination or in some way establishing quotas. There are many positive things which this Chairman wants to do and is proposing and has proposed. So, it is not as if we get a chance to reject the position of a bigot.

The notion, finally, that there was some kind of political gain in this action, seems to me, contrary to the case. I think the prevailing sentiment of people is more along lines of what you say, Mary Beth, than along the lines of what the Chairman has said. I thought it was an act of enormous courage on his part to phrase matters as he did and to take seriously the position he outlined in a very thoughtful book. So, those are the things that I think are worth considering.

CHAIRMAN BENNETT: Louise.

MS. KERR: I happened to be in Washington the day that this came out in the newspaper, for the Jefferson Lectern Committee, and since I had not had the chance to read the newspaper, somebody in the public relations office gave me a copy of the letter and the statistics that accompanied the letter.

I am kind of curious about some definitions, and you asked about a dialogue. It would, I think, be helpful to -- at some future point -- not necessarily today, to continue the dialogue. You say in your letter "...it was the glory of America to proclaim to the world all men are created equal. To believe in human equality and equal liberty can mean nothing less than to treat white and black, male and female, Jew and Gentile, as morally equal".

As I reconstruct those statistics, and I may be off a little bit because I do not have them before me, there are something like 242 people in this agency, of whom about 158 are women. Of those 158 women, over two-thirds of them are in the bottom three categories of the agency. As I recollect, the bottom category is something like 90 per cent women; the next to the bottom category, 75 per cent women; the category above that, something like 92.

In the next to the top category, let us say say, GS-12 to 15, there are 33 per cent women, and up until yesterday, the top category had zero per cent women. As I recollect, in the one year that these statistics cover, which is all under your aegis, there were 15 men, black men, in the agency as of '82 and in '83, there were 12 black men. The agency lost in that year six people. It lost seven black people. The placement of minority women and blacks is almost entirely, exclusively, in the bottom part of the agency. It is my understanding that in the professional category we have just lost the only black professional man in this agency. Now I am not sure, I would like some definition of what "morally equal" means.

CHAIRMAN BENNETT: Treating people on the same terms; treating people with equal respect. Are you suggesting that these people you are talking about, this change, were driven out?

MS. KERR: No. I am just ---

CHAIRMAN BENNETT: That's right. You are just making a general kind of charge without any specific evidence.

MS. KERR: I am ---

CHAIRMAN BENNETT: Well, it sounds like a charge to me.

MS. KERR: Well, it sounds like a charge to me.

MS. KERR: Well, then, I make no charges. I am describing statistics, and I think it would probably be good if you distributed those statistics to all of us and we could discuss them.

CHAIRMAN BENNETT: I am happy to distribute all the statistics, but I have to tell you ---

MS. KERR: I do not know what they mean. I am asking you what they mean.

CHAIRMAN BENNETT: I have to tell you, I must say, I hear a charge in that. If you have a specific charge, I would like to hear it. If you wish to disassociate yourself from my view, feel free to, as you have done now, or in any other public forum. But if you are going to raise implications about what I take to be an implication of discrimination on my part, have the facts to back it up. Yes.

MS. RICARDO-CAMPBELL: I feel I should try to speak to this issue although I had not heard about it until I arrived this morning. First of all, the word "men" in the law is generally used in the generic sense to mean men and women. This is true in the Social Security Act. It is true in lots of other areas.

Secondly, I am at Stanford University, the Hoover Institution, and in academic circles, this is a continuing problem. Both sides of the issue are being debated in the fashion that it is beginning to be debated here, but usually not deteriorating to the level it just deteriorated to -- that's both sides -- initiated, I hate to say, by my good friend, I hope, Louise.

MS. KERR: I am sorry. What did I initiate?

MS. RICARDO-CAMPBELL: Well, I think it is -- the level of discussion deteriorated slightly when you begin to use the numbers and imply without stating, and knowing the facts -- you imply that these people were deliberately kind of squeezed out. But let's drop that if we don't want it.

It seems to me that competence is the main issue in hiring anybody at a level at which they have to do a job that will cost -- affect expenditure of tax money of the public. And this would be true if you want people hired to teach people even in private universities. Stanford University has a very poor record for number of women in positions of higher -- that is, tenured positions and professorships. It has a very poor record for women in administrative jobs.

This does not mean that they have not searched. I have been on search committees for the Hoover Institution. We have offered jobs to women at top levels and not had them accept them, in the final analysis, because the spouse, if you would like that word, and I do use it all the time, and my husband does equally, he will not move because he cannot get a job necessarily at the pay at what he is earning.

That is, this is an argument that could go on all day, not just the morning. I think it is important for the competency to be there. I was on a Presidential Commission under the Nixon period which was headed by a black woman. She was a very nice woman, but she was way above her head. It was embarrassing to me as a professional woman, and may I say, she was saved by the white males on the committee that understood this thing because what they did, and they did it deliberately, they did her work. This was an unpaid committee. It went through, and it never surfaced. And I will not identify it because I have been on a lot of those committees; you cannot find it.

What I would like to be assured is that the pool from which you select people is large enough that you are distributing information about vacancies here to a large enough pool of Blacks, Hispanics, and women that the applicants would come in. And that is what I would like to be assured of. I do not like a quota system. I was brought up in a religion in which you are discriminated against because of quotas, and I think you will find a lot of people of that faith, which is the Jewish faith, that will be dead against quotas for that reason. They have experienced them in a negative sense. Thank you.

CHAIRMAN BENNETT: Thank you. Other comments?

MR. BERNS: I would like to emphasize something that Jack ---

CHAIRMAN BENNETT: Can you bring your microphone closer?

VOICE: No. Walter, the other one, please.

MR. BERNS: I would like to emphasize something. I thought your statement was an eloquent statement -- Bill's statement, as Jack said, took enormous courage to make. Living in Washington, being familiar with the major news networds, the nets, Washington Post, New York Times, I realize how rare in this setting, how rare such a statement is. As a matter of fact, in addition to you, I can only name a couple of people in public positions who have publicly taken this stand, and they have suffered because of it.

I am thinking of Linda Chavez over at the Civil Rights Commission and someone like Jack Bunzel, an old-time civil rights advocate, and then someone like Morris Abram, who has lost his old friends, who has suffered in the press, and whose record as a civil rights advocate is exceeded by no one's. He had absolutely nothing to gain by taking his public stand against quotas, but he did it. And he has suffered as a result of it. It is so easy to go along with what is so obviously the prevailing fashion.

The best example of this, I suppose, was in the debate at Dartmouth when Phil Donahue asked the eight Democratic candidates if they were in favor of affirmative action, and they all raised their hands. I was reminded of a kindergarten class in which the kindergarten teacher asks how many students had brushed their teeth that morning, and they all raised their hands.

One would wonder if the question had been reformulated, and reformulated altogether accurately, what their response would have been on this national television network. How many of you are in favor of reverse discrimination? I would like that to be put. It seems to me that it is absolutely essential that this issue be fought out. I would like a national political campaign to be fought out on it. I am persuaded that there have been all kinds of things that have happened in this country -- consent decrees signed on January 9, 1981, 11 days before the new administration came in, and a consent decree signed by a judge in the District Court of the District of Columbia affecting the whole civil service, the whole Federal work force, and large parts of that Federal work force not even being informed of the nature of the -- the fact of the suit.

What I am suggesting is that we have been moved in this position where we are in favor of quotas disguised in one way or another, one euphemism or another, and this has been going on behind the backs of the American people, to some extent. It is because of Linda Chavez, Jack Bunzel, Morris Abram, and William Bennett that it might be possible to put this thing now on -- bring it to the attention of everybody. Let it be debated. Let it be understood for what it is because it is a quota system.

MR. EARLY: Mr. Chairman, will you hear a comment from a staff member?

CHAIRMAN BENNETT: Sure. Sure.

MR. EARLY: My name is James Early. I am the last black professional male at this agency. I resent the kinds of comments that I hear that would suggest that people like myself come here as a result of quotas. I did not come here as a result of a quota system. I came here pretty much like most of the white males who come in and are administrators here. Someone knew of the quality of the work that I was doing and asked me to apply for a job.

I submitted to this agency several months ago a concern about the panel process of this agency, its lack of numbers in terms of women and in terms of minorities. It took almost three months for me to get a response with a lot of gobbledygook about -- when I simply said that I am concerned that we are not accepting ourselves the breadth of applicants out there and it can be demonstrated by looking at the racial and gender composition of the panels.

Now, if you look at this agency, you will note, as has been stated, that those numbers are for real. I suggest that the agency if it really wants to seriously consider the question of quality stop -- saying outright that women and minorities who are here are here as a result of quotas, as a result of some kind of process that says they are not equal to everybody else.

The last point I would like to make, Mr. Chairman, is that look at the review process. We have a double standard here. Minority applications and applications dealing with women are being reviewed to death. We all know the scientific law of diminishing returns. Send an application out to six people, and they say it is a very good application. Send it to six more, and the quality will start to go down. Or better still, rather than send it to experts in the field, send it to social scientists when it is really an application dealing with literature.

These are charges that I would make. I want to be clear that it is a charge against the agency, and the agency should seriously look into it. You should also talk to the staff here. The staff will tell you -- they will not tell you in open session but take the opportunity to sit down and talk with staff about the questions of sexism, about people being referred to as "that pretty little Japanese girl" or "that splendid lady" or even someone saying "that deaf girl". Talk to your staff and you will find out that these are true charges and then do something about it.

And stop saying that we are here as a result of some kind of an under the table process, some kind of system of quotas. Now, you demonstrate to me that I am here as a result of some kind of quota system.

MR. BERNS: May I respond to that?

CHAIRMAN BENNETT: Yes.

MR. BERNS: It seemed to me when you began -- it seemed to me that you were making your charges against some other members here who have spoken in the absolute opposite direction of my comments. It never occurred to me that you were here as a result of a quota. I never said there were quotas in this agency. I heard the Chairman say that there were not quotas in this agency. I did not make any charges about quotas being around here. It seems to me that I am the one person who is opposed to quotas. Again, it never occurred to me to think that you were making your charges against me. I thought you were making those charges against those people who have come out in favor of quotas.

CHAIRMAN BENNETT: Excuse me. Yes. Go ahead.

MS. RHOME: I have a point of order. There was an initial report here that had to do with whether or not a statement was made publicly without consultation of the Council. That has been answered by Jack that this issue is not necessarily the responsibility of the issue. We now have gotten involved in what is happening in Stanford University and other areas, and we are off the point.

The point, the initial point, the core point, was whether or not it was appropriate for the Director to issue this public statement and to take this particular action, and I think we have gotten beyond that area.

CHAIRMAN BENNETT: Let me just -- I do not want to foreclose the discussion. It is obviously a matter of importance to a number of people here. Let me just mention that I would urge Council members to follow Mr. Early's advice and talk to the staff, if they wish, about matters like this so that they can make their own determinations.

Second, as to the composition of panels and reviews, let me ask, John, I think you and I drafted the statement early on to all staff about the composition of panels, panels and reviewers, that dealt with this matter. Let me ask that that be circulated again to the Council as pertinent to this issue.

MR. CHICKERING: I would also like to respond to Mr. Early's comment, because I understand at one level the reason for his anger, and I have to say that it is an anger that I feel myself. But, unfortunately, the anger he feels about the implication that he, or any minority or woman, is working in this agency as a result of quotas, because such a suggestion, in fact, delegitimates their professionalism and their success.

The difficulty is that he then went on to ask the question, and say that we should be asking the question, about the composition of the panels. The trouble is that to start doing that is to imply that only a balanced composition would imply non-discrimination, which is a call for quotas. It is the instinct to be asking that, to be getting all these statistics, which itself has created the impression that Mr. Early, and others like him, are here as a result of the quota system. I think he has every right to feel angry about that, but I think that a lot of people are basically arguing mutually exclusive positions on this.

CHAIRMAN BENNETT: Only with consent of Council, because I do not want to suggest that I am trying to limit this unreasonably, but could we have John's comment, Louis', and Jack's and close it there? Would that be agreeable to the Council because we do have other business. The American people have wrestled with this question for a number of years, and I am sure we could too. Roland.

MR. DILLE: I was about to speak, but I will not.

CHAIRMAN BENNETT: You don't -- then we will stop with you. Okay? Go ahead, John.

MR. AGRESTO: To make our position absolutely clear on this, we have not and will not hire or promote on the basis of race or sex. We have not done that. We will not do that. We think that is monumentally unfair to those who would come into these positions and to labor under the illusion that they were there because of race or sex. I think Jim Early's first point is absolutely correct. He was not here because of his race. He was here because of his expertise. Any indication that we should act in a contrary fashion would cast aspersions on him and those who [illegible]

The same is true for the review process. We will not have reviewers who are here on the basis of their race or their sex -- final criteria. To do that makes it difficult for us to defend the conclusions we come to in our review process and to defend our promotions and hirings here. It would make us very ashamed.

CHAIRMAN BENNETT: Louis.

MR. HECTOR: Let me start out by disagreeing with Jack and Walter and end up with agreeing with them. My own personal feeling is to put it in one phrase is that the road to discrimination is paved with good intention, by which I mean that I personally believe that the -- worked out by administrative agencies and the Federal courts over the last 10 years that it is the numbers that count, not the presumed intent, is the only way out of our discriminatory situation in the United States.

But that is a very debated attitude, a very debated principle. The present administration feels profoundly the other way. The Department of Justice has argued the other way in court. The matter is up now, as Walter rightly points out, probably will be an element in this year's presidential election. It is certainly being fought out in the Congress at the moment. It seems to me that it is a very basic, very important national issue, to which the nation will address itself in the months ahead. I agree with Bill, much as I disagree with his statement and his position on this issue, that the best course to follow is to let the American people, through their democratic processes, do the best they can do, because I do not think we are going to settle this very profound disagreement at this meeting.

MR. NEUSNER: I did not hear the part where you disagreed with me.

MR. HECTOR: I suppose I assumed that you were in favor of letting the American people work this out.

(Laughter.)

CHAIRMAN BENNETT: Roland or Jack ---

MR. HECTOR: I would like to suggest -- it seems to me that is the profound level we are on. I would hope so.

MR. DILLE: I may be in disagreement at some other levels with the Chairman -- it does seem to me that what we are saying is that in this agency the staff, which many people respect very much -- this is a choice place of work, it seems to us. Equality of opportunity to work here is not demonstrated much by the figures. Now -- it seems to me, requires extraordinary effort rather than quotas. And with extraordinary efforts, I think one works hardest . My suggestion is .. we have increase the number of women rather markedly without ever hiring a second-best candidate, which I suspect is being done.

But the moot point I want to make, and Bill you are in [illegible] generous to say that, what you did about politicizing the matter. To comply or not comply may be equal to the political facts when one is a political gesture, and the other is not, makes some people say it politicizes and some people say you are courageous. I think you carefully chose your ground rules and you are very much in the right.

It is certainly true that very few people take exception to the prevailing fashion. It would guess it comes easier when one's unique statement is not altogether unique since it is shared by the President of the United States.

CHAIRMAN BENNETT: Well, if I may just indulger a personal privilege there since that is about me. On this issue I have found, this sounds self-serving, but I think I have to say it, that I have been against prevailing fashion on this in a numb er of environments.

I was against this at the University of Southern Mississippi in Hattiesburg, when I continued to write editorials about the segregated facilities, and it was suggested that I be quiet about this or my contract was not going to be renewed. That was, of course, unfashionable racism. If it is done in Mississippi they take objection to it. When I got to Harvard and found a more fashionable version of racism where, again, people were segregated, and I was with one of my proctees, a freshman, a black student and we were talking and we went to his table, I go to a particular table for lunch -- I joined him and he said, "You can't sit here. This is for the brothers." I said -- you know, I dealt with this in Mississippi, and it was racism. In dealing with it at Cambridge, it is racism. He said, "You had better leave." I said, "I will go limp and you will have to carry me out." It has been my practice, not on purpose, to be against prevailing fashion, and I think if one is committed to a principle, one simply has to follow that out. Jack.

MR. NEUSNER: I think Lou Hector is right in saying that people should stand up and express their views, and the majority will win. So, I would like to offer a resolution for giving people a chance to express their views.

It takes the following form: the National Endowment for the Humanities should neither favor nor slight anyone because of race, color, national origin, religion or gender. This is the advice of the Council to the President. That is the resolution.

CHAIRMAN BENNETT: Is there a second?

MS. RHOME: Would you mind reading it again? I know it is short, which is good.

MR. NEUSNER: The National Endowment for the Humanities should neither favor nor slight any one because of race, color, national origin, religion or gender. This is the advice of the Council to the Chairman.

CHAIRMAN BENNETT: Do we have a second?

VOICE: Second.

MS. RHOME: Mr. Chairman.

CHAIRMAN BENNETT: Discussion? Yes.

MS. RHOME: That is a good resolution and I think that may express the thoughts that many people are having right now. It does not speak to the fact that we do already have an affirmative action policy. It is just going to be a continuing policy. It is not encouraging unique stands by which people like Mary Barry or Jill Rukelshaus can indeed lose their careers over this issue. It doesn't get us involved in other areas either in which we have problems. It speaks just to the problem that we have here and I would like to endorse it.

CHAIRMAN BENNETT: The resolution is on the table. It has been seconded. All in favor raise your hands please. (A show of hands was seen.) Well, I will take this as the sense of the Council. All opposed. One Abstentions. Two.

Hector

MR. DILLE: Let me state, Mr. Chairman, that my negative vote is based on my belief only --

CHAIRMAN BENNETT: Thank you. All right. Shall we move on? Let me just say that this is, for those who care about this issue, it is a difficult one. I am glad we had a full discussion of it. Whatever else one may want to say or think, let's remember, as we go to our other business, that it is indeed, I think, a great opportunity to work at the National Endowment for the Humanities or for the National

Endowment for the Humanities as Council members do. Whatever else people may think of my position, people here or elsewhere, I want to report to you again, as we get into our other work, that more notice has been taken of this agency and its work and its standards, I think -- I will not say than ever before -- but let me just say that it is a continuing sense or impression. We are continuing to get ever increasing numbers of requests from other agencies and officials who want to know about our procedures, our panel and review process, the way various offices work. The reputation of this agency for very good work and for a highly professional standard among its staff is increasing.

With that, I do not say we can forget this discussion. We should not; it is an important issue. But I hope we can attack the rest of our issues, deal with the rest of our issues, not distracted by it because we have other important business in front of us as well. Thank you very much for your comments. Introduction of new staff, Mr. Marshall.

INTRODUCTION OF NEW STAFF

MR. MARSHALL: I would remind you -- turning to the things that are in your folder -- I would just like to point out to everyone that you have before you the quarterly report called "In the News" from our public affairs office. It is a remarkably varied document, I think, as most of you know who have had a chance to look through it or follow it from

Minutes of NEH Advisory Council
mtg (unrevised); Feb. 16,1984

72nd Council

Thursday, February 16, 1984

COMMITTEE MEETINGS

(Agenda Item I.)

Separate meetings were held by the Committee on Education Programs and State Programs, the Committee on Fellowship Programs, the Committee on General Programs and the Committee on Research Programs and Program and Policy Studies to discuss specific applications and Endowment policy.

A separate meeting was also held by the Challenge Grant Committee to discuss specific applications.

Friday, February 17, 1984

The meeting was called to order at 9:00 a.m. by the Chairman. A quorum was present.

MINUTES OF THE PREVIOUS MEETING

(Agenda Item II.)

The members present approved the minutes of the 70th meeting held on November 16-17, 1983.

REPORTS

(Agenda Item III.)

C. Introductory Remarks

The Chairman stated the question of significance of proposals continues to be an agency concern. The Chairman stated he has asked the staff both to be mindful of the question when examining proposals and to forward to him their suggestions on how to best address the issue.

Ms. Norton referred to the Chairman's January 16, 1984, letter to the Equal Employment Opportunity Commission. She expressed concern that the Council had been neither consulted nor informed in advance of the decision not to comply with the EEOC Directive to submit hiring goals. She questioned whether the decision not to comply with the EEOC Directive had politicized the Endowment. She also indicated her disagreement with the Chairman's position. Ms. Rhome stated the EEOC Directive had not proposed hiring quotas. Ms. Rhome observed that statistics can help locate hiring inequities. Ms. Kerr described Endowment employment statistics and asked whether any patterns were revealed by them.

Noting that he had not refused to submit and indeed had supplied to the EEOC requested factual information, the Chairman emphasized his decision not to formulate hiring "goals" was based on his fundamental belief that quotas are wrong. The Chairman termed hiring goals a euphemism for quotas. He noted that it was the position of the Justice Department that the EEOC had exceeded its authority in this matter. He stated that he does not reject the notion of affirmative action, reminding the Council of his February 2, 1982 memorandum in which he affirmed his commitment to making Endowment programs available to every eligible individual and institution regardless of race, color, or creed. The Chairman urged anyone knowing of discriminatory practices at the Endowment to contact him immediately.

As to notifying Council of his decision, the Chairman commented that Endowment hiring policy is an administrative matter for which Council advice is not normally sought.

The Chairman stated the EEOC Directive forced him to choose whether or not to submit hiring goals. Either choice would have necessarily led one side or the other to think that he had "politicized" the agency, by aligning it with a particular viewpoint. The Chairman stated he had been as clear as possible on this issue. He reminded the Council that when he first appeared before them in February 1982, he stated that he would not discriminate on the basis of race, sex, religion, national origin and the like. That means he said not to give somebody points for being a woman or black or white or male or whatever. He stated that we all seek a world in which people will not discriminate; to get to that world is to act on that principle.

Mr. Neusner stated the Council does not function as a board of directors, but rather acts as a body of advice and review concerning grants. He expressed regret that the instant discussion did not consider the excellent existing and proposed Endowment projects for minority constituencies. Mr. Neusner rejected the notion that the decision not to comply with the EEOC Directive was for political gain. Mr. Neusner noted that since the decision was made against what many consider to be prevailing sentiment, the action was one of enormous courage. Mr. Berns stated the Chairman has taken a courageous stand against disguised quotas. Mr. Berns noted the Chairman's stand on this issue would bring it to the attention of the American people and into the public forum for much needed debate.

Mr. Hector stated good intentions not to discriminate are not enough. He said that the remedies fashioned in the courts and by administrative agencies are the only way to eliminate discrimination. Mr. Hector observed the issue is one of national importance and is best resolved by the American people through the democratic process. Mr. Dille added that employment statistics alone do not demonstrate equality of opportunity. He argued that extraordinary efforts, not quotas, are needed to increase the number of women and minority employees. Mr. Dille agreed with the Chairman's earlier statement that the EEOC directive represented a political judgment. Although he might disagree with the Chairman on the need for extraordinary efforts, he also agreed on a number of points and noted that the Chairman had carefully chosen his ground in reaching his decision.

James Early, who identified himself as a black professional staff member, asked and was permitted to address the Council. He stated that it would be unfair to believe that black staffers are hired because of quotas and not for the quality of their work. Mr. Early expressed concern about the number of minorities and women who serve on panels and the amount of review given to certain applications. He urged Council members to speak to staff to discover their views on these issues.

The Chairman encouraged the Council to speak with staff members. Mr. Chickering stated the implication that minority and women staff members are hired as a result of quotas, delegitimates their professionalism and career achievement. Mr. Chickering continued that Mr. Early's implication that only a certain composition on review panels achieves non-discrimination is similarly a call for quotas. Mr. Agresto emphasized the Endowment has not and will not hire or promote on the basis of race or sex. He added employees are hired for their expertise and not on the basis of race or sex. The same selection process applies to reviewers.

Mr. Neusner then offered the following resolution:

> The National Endowment for the Humanities should neither favor nor slight anyone because of race, color, national origin, religion or gender.

The resolution was seconded and carried by a vote of the members present.

revised

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Thursday, February 16, 1984

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A. Introductory Remarks

The Chairman stated the question of significance of proposals continues to be an agency concern. The Chairman stated he has asked the staff both to be mindful of the question when examining proposals and to forward to him their suggestions on how to best address the issue.

Ms. Norton referred to the Chairman's January 16, 1984, letter to the Equal Employment Opportunity Commission. She expressed concern that the Council had been neither consulted nor informed in advance of the decision not to comply with the EEOC Directive to submit hiring goals. She questioned whether the decision not to comply with the EEOC Directive had politicized the Endowment. She also indicated her disagreement with the Chairman's position.

Ms. Rhome reminded that the Council adopted an affirmative action policy which affects program and project awards. She stated that no EEOC regulations require quotas and that Executive Order 11246, issued by President Nixon, and still in effect, denies the use of quotas. Only in cases of "found" discrimination do courts impose a remedy of quotas.

Ms. Kerr described and expressed concern about Endowment employment statistics which showed that most women and minorities in the agency are concentrated in the bottom three categories (levels GS-1 through GS-9) and that, during the year covered by the statistics, there had been a loss of minority employees, particularly professional, black, male employees. She asked that the statistics be interpreted in light of the agency's response to the EEOC and that the statistics be circulated to the Council for further discussion.

Noting that he had not refused to submit and indeed had supplied to the EEOC requested factual information, the Chairman emphasized his decision not to formulate hiring "goals" was based on his fundamental belief that quotas are wrong. The Chairman termed hiring goals a euphemism for quotas. He noted that it was the position of the Justice Department that the EEOC had exceeded its authority in this matter. He stated that he does not reject the notion of affirmative action, reminding the Council of his February 2, 1982 memorandum in which he affirmed his commitment to making Endowment programs available to every eligible individual and institution regardless of race, color, or creed. The Chairman urged anyone knowing of discriminatory practices at the Endowment to contact him immediately.

As to notifying Council of his decision, the Chairman commented that Endowment hiring policy is an administrative matter for which Council advice is not normally sought.

The Chairman stated the EEOC Directive forced him to choose whether or not to submit hiring goals. Either choice would have necessarily led one side or the other to think that he had "politicized" the agency, by aligning it with a particular viewpoint. The Chairman stated he had been as clear as possible on this issue. He reminded the Council that when he first appeared before them in February 1982, he stated that he would not discriminate on the basis of race, sex, religion, national origin and the like. That means he said not to give somebody points for being a woman or black or white or male or whatever. He stated that we all seek a world in which people will not discriminate; to get to that world is to act on that principle.

Mr. Neusner stated the Council does not function as a board of directors, but rather acts as a body of advice and review concerning grants. He expressed regret that the instant discussion did not consider the excellent existing and proposed Endowment projects for minority constituencies. Mr. Neusner rejected the notion that the decision not to comply with the EEOC Directive was for political gain. Mr. Neusner noted that since the decision was made against what many consider to be prevailing sentiment, the action was one of enormous courage. Mr. Berns stated the Chairman has taken a courageous stand against disguised quotas. Mr. Berns noted the Chairman's stand on this issue would bring it to the attention of the American people and into the public forum for much needed debate.

Mr. Hector stated good intentions not to discriminate are not enough. He said that the remedies fashioned in the courts and by administrative agencies are the only way to eliminate discrimination. Mr. Hector observed the issue is one of national importance and is best resolved by the American people through the democratic process. Mr. Dille said Ms. Kerr is not making a charge of discrimination. "What she is saying, and what I agree with, is that equality of opportunity to work in the Endowment is not much demonstrated by the figures." Mr. Dille said affirmative action does not require quotas. It requires extraordinary efforts, and goals for hiring are one of the ways of reminding people that such efforts need to be made.

Ms. Ricardo-Campbell said the word "men" in the law is generally used in the generic sense to mean men and women. Competence is the main issue in hiring anybody, including an individual whose pay comes from the taxpayers. She said that she does not like the quota system, but would like to be assured that the pool from which selections are made is large. In other words, that the information about vacancies at the Endowment is distributed to a large portion of the qualified pool of blacks, hispanics and women.

James Early, who identified himself as a black professional staff member, asked and was permitted to address the Council. He stated that it would be unfair to believe that black staffers are hired because of quotas and not for the quality of their work. Mr. Early expressed concern about the number of minorities and women who serve on panels and the amount of review given to certain applications. He urged Council members to speak to staff to discover their views on these issues.

The Chairman encouraged the Council to speak with staff members. Mr. Chickering responded to Mr. Early's comment, stating that he understood at one level the reason for Mr. Early's anger. Mr. Chickering said that Mr. Early is angry because of the implication that he, or any minority or woman, is working in this agency as a result of quotas -- an implication which delegitimates his (their) professionalism and success.

Mr. Chickering said Mr. Early's anger, however, is misdirected. Mr. Early evidently does not appreciate the extent to which affirmative action, which is based on quotas and which he supports, is itself responsible for the implication. Mr. Chickering agreed that Mr. Early has reason to feel anger. Mr. Chickering said that he feels the anger himself, but that Mr. Early should join the leadership of this agency in attacking the true cause of it.

Mr. Neusner then offered the following resolution:

> The National Endowment for the Humanities should neither favor nor slight anyone because of race, color, national origin, religion or gender.

The resolution was seconded and carried by a vote of the members present. Mr.Hector voted "No," stating his belief that only through affirmative action can we solve the problems of discrimination in America. Ms. Norton asked to be recorded as abstaining on the vote.

John Agresto response to House
Comm. Gov. Operations on EEOC
affirmative action compliance;
May 28, 1985

NATIONAL ENDOWMENT FOR THE HUMANITIES

WASHINGTON, D.C. 20506

THE CHAIRMAN

May 28, 1985

The Honorable Cardiss Collins
Chairwoman
Government Activities and Transportation
Subcommittee
Committee on Government Operations
Rayburn House Office Building
Room B-350-A-B
House of Representatives
Washington, D.C. 20515

Dear Chairwoman Collins:

This is in response to your letter of May 7, 1985 asking the Endowment to comment on the findings and recommendations contained in the Sixth Report by the Committee on Government Operations concerning "The National Endowment for the Humanities and the Equal Employment Opportunity Commission." Since not all of the findings and recommendations pertain to the Endowment, I have only a few brief remarks to make.

The Committee states that it found "shortcomings" in NEH's "strategy for achieving compliance with Federal civil rights laws through aggressive recruitment." I think the record will show that there are no "shortcomings" in our efforts to recruit minority and women employees. NEH casts a wide net in recruiting for mid- and senior-level professional job vacancies and specifically targets minority and women applicants by placing job announcements in a number of minority publications. In addition, NEH has expanded its mailing lists for job announcements to include institutions with traditionally minority populations. We take our obligation to recruit seriously, and should not be faulted on that score.

The Committee recommends that NEH, along with the Department of Justice and the FTC, submit to EEOC "goals and timetable data" regarding "recruitment, hiring, and internal promotions." As you know, Dr. Bennett in his letter of January 16, 1984 to Clarence Thomas of the EEOC and in his subsequent testimony before your Committee strongly opposed the principle of setting racial goals for hiring. I endorse Dr. Bennett's position. It will remain NEH policy neither to favor nor slight anyone because of race, color, national origin, religion, or gender. Since we refuse to judge people on the basis of sex or race, we will not establish "goals and timetables." Moreover, given the opinion of the Justice Department and the testimony of Mr. Devine and Mr. Thomas at your hearings, we are even further convinced of the legality — as well as simple justice -- of our position. Nor do we think such "goals and timetables" are warranted given NEH's admirable record in hiring and promoting minorities and women.

The Committee also recommends that appropriations be rescinded for agencies that are "not in compliance with data submission requirements as mandated by Section 717 of Title VII of the Civil Rights Act of 1964, as amended, and by Section 310 of the Civil Service Reform Act of 1978." Since our only "offense" is that we have refused to discriminate on the basis of race or sex, we think this action would be most unfortunate.

The other recommendations of the report do not pertain specifically to NEH but are concerned, instead, with certain legal issues involving EEOC's guidelines, regulations, and enforcement powers. Since these issues are only indirectly relevant to the Endowment, I should not comment upon them. I would like to say, however, that the dissenting views of the Committee's minority members raise serious questions about these issues and about the content of the report, issues that should be addressed by the Congress.

As is customary with Congressional correspondence of this nature, copies of this letter will be made available to other interested Congressional committees.

Sincerely yours,

John Agresto
Acting Chairman

John Agresto ltr to House Sub.
on Select Education on affirma-
tive action requirements; Sept.
4, 1985

NATIONAL ENDOWMENT FOR THE HUMANITIES

WASHINGTON, D.C. 20506

September 4, 1985

The Honorable Pat Williams
House of Representatives
Washington, D. C. 20515

Dear Mr. Williams:

As carefully and as thoroughly as time permitted, I have studied the "rough discussion draft" of the bill prepared by your subcommittee to amend this agency's authorizing legislation. In all candor, I must say that there are provisions of this proposed legislation which, if enacted, would seriously undermine the basic purposes for which the National Endowment for the Humanities was created -- purposes that have been scrupulously upheld by each succeeding administration including the present one, and purposes that have met with almost universal praise from the scholarly community and the public at large.

For twenty years the Endowment has tried to provide federal support for outstanding efforts to advance scholarship and learning in the humanities. For twenty years this support has been predicated on an impartial peer review process, a process in which project proposals, submitted in open competition, are evaluated strictly on their intellectual merits. Your draft bill, for the first time, would direct us and the panels to look at who submits proposals to us, rather than the merits of what is proposed, and to list certain favored groups, factions, and minorities as preferred, even to the extent of having particular "set asides" for their benefit. These actions change the character of this agency from an independent peer-review system that supports the most worthy proposals to a politicized agency with a social agenda.

If there is a single theme that pervades the language of this draft bill, it is that the availability of federal funding for the humanities ought to reflect a particular, pre-conceived notion of social, political, and ideological distribution. Under this proposal, the Endowment would be directed to establish new programs, to be funded by a 10 per cent set-aside in the agency's definite appropriation, that would accord priority in funding to organizations and individuals whose work is reflective of a "minority group, an inner city area, or a rural or tribal community," among other things. The state humanities councils would be saddled with making additional, burdensome reports, which the Endowment would then be required to use in redressing "underrepresentation" or "imbalances" in the agency's grant making. Finally, the Endowment would be required to select review panelists on the basis of a variety of factors unrelated to the competence of scholars and individuals to judge grant proposals. All of these proposed changes would undercut the fundamental NEH principle that all funding decisions are based on merit, not on quotas, set-asides, or other non-relevant and discriminatory criteria.

To buttress these changes, the draft bill adds to the already long legislative definition of the humanities, replaces the traditional term "chairman," and instructs the agency to file with the EEOC a plan for discriminating on the basis of race and sex in hiring, firing, and promotion. Both my predecessor and I have testified repeatedly (see enclosures) on why such goals and quotas are totally at odds with sound policy and the mission of the agency. I consider this part of the draft bill, along with the mandatory set-asides, and the requirement that certain "interests" and "groups" be given a priori membership on the peer panels, to make the bill mortally defective. For twenty years Congress and the various Administrations have tried to set the highest standards for the agency and its work and to avoid using the agency to reward certain politically favored groups. The proposed language would end this tradition.

Let me add that much of what this draft bill would require us to do is unnecessary. We already make strenuous efforts to reach everyone who would benefit from the support of this agency. I myself have spoken at poor, inner city schools, to meetings of Native American tribal educators, at historically black colleges, and to meetings of social scientists. The Endowment staff has done even more than I. In doing it in this manner we have compiled a record of notable, even spectacular, projects carried out by minorities, urban groups, black colleges, and more. To each of these groups, however, we held out both help and high standards, support and the possibility of doing excellent work. To none of them did we ever propose favored treatment, separate considerations, or set-asides.

Nothing is easier than politicizing this agency. The Chairmen and staff of the NEH have always been approached by friends and partisans seeking separate or special treatment. To all who would pressure us we can point to the legislation as it now stands, legislation which establishes high, neutral standards. We now can say the same thing to everyone: "If your project can meet these standards, it will be funded; but we do not care who you are or who you know." Once the legislation admits of certain favored groups, certain interests, set-asides for special consideration, what shall we say to others, perhaps equally powerful politically? This draft bill so politicizes academic life, inquiry, and scholarship so as to undermine exactly what the original legislation tried to prove to all critics -- that there could be a public agency independent of political favortism or political pressure or political intrusion.

When you and I and our staffers met, before our first hearing, I said that the most striking thing about our reauthorization bill was that it managed to unify the academic and public humanities community, the agency, the President, and OMB. In fact, unlike any other similar legislative act I know, the law as it stood and as we proposed it had won the support of all sides, all views, all parties. At hearings held by your subcommittee and in the Senate, one witness after another, representing a wide spectrum of scholarly and public interests in the humanities world, spoke up in defense of the current legislation. This is a fragile coalition, especially given the acrimonious disputes that we know are ever-present in intellectual life. The committee's bill, if it passes, would blow that coalition apart. I cannot support this bill as proposed. I'm sure many members of the humanities community will not support this bill. And I cannot in conscience ask the President to support this bill. I strongly urge that your subcommittee reconsider its recommendations.

Attached is a point-by-point discussion of the changes proposed in the Act which affect the NEH.

Time has not permitted securing advice from the Office of Management and Budget as to the Administration's position on this legislation or the views expressed in this letter.

As is customary, I am sending this letter and its attachments to the members of the committee, and to others interested in the progress of this legislation.

Sincerely,

John Agresto
Acting Chairman

Attachments

cc: Members of the Subcommittee

EEOC review ltr of NEH FY'85
incomplete affiramtive action
plan; Sept. 24, 1985

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SEP 24 1985

Ms. Carol M. Gordon, Director
Office of Equal Opportunity
National Endowment for the Humanities
Old Post Office Building
1100 Pennsylvania Avenue, N.W.
Washington, DC 20506

Dear Ms. Gordon:

We have completed our review of your agency's FY '84 Accomplishment Report and FY '85 Plan Update.

Some months ago, when we received your submission, this office contacted your office regarding a number of problems in your submission. Your report and update, absent the missing elements listed below, do not meet the full requirements set forth in MD-707A. It is, therefore, being placed in a status of "incomplete" pending additional information from you.

1. EEOC Form 507 did not provide the required Underrepresentation Indicies. The figures provided are the simple percentages of each group's participation which are compiled on EEOC Forms 505 and 506.

2. EEOC Forms 508 and 509 (hiring goals/internal movement goal accomplishments by PATCO) were not submitted.

3. EEOC Form 510. The barriers described cannot be properly evaluated because your agency did not provide us with the specific groups in your workforce which are underrepresented.

4. EEOC Form 511. The number of vacancies projected should equal the total of EEOC Forms 512 and 513, plus other vacancies which are anticipated. Consequently, since EEOC Form 512 and 513 were not submitted, it is unclear how vacancies were projected on EEOC Form 511.

5. EEOC Form 514. No projected barrier elimination for FY '85 was submitted.

6. Certification of Qualifications of Principal and Operating EEO Officials. Section 717 of the Civil Rights Act requires that agencies report annually qualifications for the principal and operating officials responsible for carrying out the EEO program.

These documents must be submitted in order that we might complete the final analysis and determination of your agency's accomplishments.

Sincerely,.

Sharon [illegible]
for Clayton Boyd
Acting Director
Federal Sector Programs Division

NEH Advisory Council discussion
of Acting Chairman's affirma-
tive action stance; Nov.1985

Marcus Cohn, Charles Ritcheson--

(Applause.)

MR. AGRESTO: -- who as you know is completing with this the expiring term of Art G (?). For this--

(Applause.)

MR. AGRESTO: Sam Cook.

(Applause.)

MR. AGRESTO: Frances Rhome.

(Applause.)

MR. AGRESTO: Roland Dille.

(Applause.)

MR. AGRESTO: Louise Kerr.

(Applause.)

MR. AGRESTO: Anita Silvers.

(Applause.)

MR. AGRESTO: George Kennedy.

(Applause.)

MR. KINGSTON: At this time, we will close the meetin to the public. I am sorry, Charles, please.

MR. RITCHESON: May I raise a point which I think needs some consideration. In view of the discussions which have recently taken place, I think it would be wise for the Council to reaffirm its resolution of February 17, 1984, Mr. Neusner's resolution offered and passed by the Council which states that "the National Endowment for the Humanities should neither favor nor slight anyone because of race, color, national origin, religon or gender." Further, I would add to that that the Council takes this opportunity to commend the previous Chairman and the present Acting Chairman of the Endowment for their exemplary devotion to the principal of equal opportunity in administration at the NEH.

That is my motion, Mr. Chairman.

MR. : Second.

MR. KINGSTON: A motion has been made and seconded to reaffirm the resolution of February 1984. Is there a discussion of that motion?

MR. COOK: Does that mean opposition to basic affirmative action program, go the time taken?

MR. RITCHESON: Does that--

MR. COOK: Does that mean opposition to vigorous affirmative action to correct injustices of the past? Does it mean opposition to time taken for those?

[illegible]

MR. RITCHESON: Mr. Chairman, it does not mean such a thing. It means support for equal opportunity.

MR. COOK: But does it mean opposition to vigorous affirmative acts in the Program to correct injustices of the past and does it mean oppostion to those time takers?

MR. AGRESTO: Would I be right in saying that this would be a resolution that would support the actions taken by the Administration both my own and Bill Bennett's regarding these?

MR. RITCHESON: That is true.

MR. AGRESTO: Thank you.

MR. COOK: But what about--

MR. AGRESTO: Myself and Bill Bennett in the name of the Councils are the issues of-- primarily are the issues of goals, timetables, and equal opportunity. Yes?

I think it is directed specifically in that--

MR. COOK: Is it not submitting certain data to the Equal Opportunity Commission?

MR. AGRESTO: I gather that is the intention.

MR. COOK: It means all that?

MR. AGRESTO: I think---

(Simultaneous discussion.)

MR. : What is the point? I don't understand it.

MS. SILVERS: I would like to make-- this may be a parliamentary request or maybe personal privilege, but I listened to a discussion yesterday regarding an interpretation of the Council position where the Council had, in my view, adopted a set of words which are-- if you will pardon the expression-- Government.

And then I heard different people with different interpretations of what that meant. I would like to have a motion on the floor which is not ambiguous. I think that is what Mr. Cook is asking for, a motion that is not ambiguous.

I think that Mr. Agresto has given an interpretation of the motion and I would feel very comfortable if the motion said precisely what Mr. Agresto had done interpreting the motion so that we are very clear about what we are voting on.

MR. RITCHESON: I think I ought to say that in my opinion that I think the motion is far from ambiguous. It is a reaffirmation of action taken earlier by the Council. That action itself is surely not ambiguous.

I then-- then I went forward to add a commendation of the past Chairman and of the present Acting Chairman for their scrupulous regard for equal opportunity in the NEH administration.

MR. AGRESTO: If I could give a little history on this,--

MR. RITCHESON: What can be ambiguous about that, Anita?

MS. SILVERS: Well, the second part is not ambiguous.

MR. COOK : I think it is ambiguous. --and have some doubt about what it includes, in the interest of which, I see no reason resurrect that. It just creates a greater ill will and hard feelings, misunderstandings and so forth.

And I think we ought to be concerned with healing wounds rather than creating new ones. When I heard Mr. Agresto speak yesterday in Executive Session, I was impressed.

Some of us felt that we should make the motion a very opposite motion. I am not going to make it because I think it would add to the feeling of brokenness in this Council, a feeling of misunderstanding and a feeling of ill will, so I am not going to offer that.

And I think this would simply exacerbate deep wounds and I see it serving no constructive purpose whatsoever.

MR. KINGSTON: Mr. Kennedy.

MR. KENNEDY: I voted for the motion last time because I thought to vote against it was a vote for prejudice. But I feel the motion was a trap and I have regretted my vote ever since as I have watched the way the Council has interpreted that resolution and I agree with much of what Mr. Cook has said, and it seems to me that-- and Mrs. Silvers-- that the motion doesn't really address the issue, it glosses it over in terms that make it very difficult to vote against it but we know that voting against it is probably the right thing to do.

MR. KINGSTON: Mr. Hart.

MR. HART: I plan to vote for this motion because it seems to me that the language of goals and timetables inevitably is translated into preferential treatment, and therefore, is in violation of the Civil Rights Act of 1964.

And in voting for it, I think that I am voting indeed for equal opportunity and not for special privilege.

MR. KINGSTON: Mrs. Rhome.

MRS. RHOME: I agree with George in that there has been some difficulty in when we consider this particular resolution.

It came out of the discussion that erupted due to our past Chairman's action on the Bill regarding the response to the Department's requesting affirmation action information.

And at the time, I gave a discussion of the regulations in which I indicated that quotas and goals were --- quotas had been disapproved by -- an order by President Nixon's and was not included in affirmative action and that goals were merely guidelines in which a person showed a good faith effort to openly advertise and to openly-- open the list for promotions for persons.

And in that discussion, which in a way was rather heated because we were concerned about this action, the-- this particular resolution was offered as a compromise wording that we were working on.

And I accepted it and said that I approved and that I was pleased that a colleague would bring forth such a resolution.

Therefore, I have to tell you that it was with great shock that I heard yesterday that that was not the understanding of everyone else within the Council, that it was not a re-affirmation of the practices of affirmative action which are the legal law of the land, but that were denial of them, and I have not accepted that inference.

And I recall at the time that we had some difficulty with the minutes and I was so concerned that when our minutes came and they were not complete transcription of the discussions that occurred here, and we had to come back and request that a full transcription come to us, that I wondered at the time why in the world we didn't get a complete transcription on the first occasion because that hasn't been the action in the six years that I have been here on our Council.

We have been free to discuss and openly talk about policies and share our views and we are a heterogeneous group for that very reason.

And so I was disturbed, and then I realized yesterday that perhaps there was a reason for it, that there was a different interpretation. And I must confess that I was deeply grieved and I have to, for that reason, vote against this motion.

MR. KINGSTON: Mr. Berns.

MR. BERNS: When this motion was adopted, I think it made some sense for this Council to act one way or the other as it did. The context was a decision on the part of the then

Chairman of the Endowment to refuse an order from the Equal-- the EOC and in a sense what Council was doing at that time was voting its confidence in the Chairman.

It, therefore, I think makes some sense for this Council to express its view on this matter one way or the other.

I am not so sure that is true at all right now. What would be the effect of this motion if it were adopted or if it were defeated?

I am persuaded by Sam Cook that-- of the inappropriateness in a sense for us to discuss it here now. Surely we cannot debate it and persuade one side or the other and I am not going to be persuaded by Sam and he is not going to be persuaded by me.

This is a subject that has been discussed all over this City all the time. I took part in a press conference the other day in which people postured and I postured along with everybody else-- made a statement and was duly recorded and the press duly ignored it all.

We have all said what we have to say on this. The Congress is going to act. I just wonder whether Charles would be willing to withdraw the motion or whether the person who seconded it would be willing to support the withdrawal and let us get on with the private business of this private session.

MR. KINGSTON: John.

MR. AGRESTO: I will back up and give you some history on this as I remember it.

When in February of that year, Bill Bennett did not submit goals and timetables, he submitted a letter to the EEOC explaining the reasons why he would not submit goals and timetables.

There was some discussion, considerable discussion at this Council as to the appropriateness of that action, and as to the grounds of that action.

It was the sentiment of the Council that the action was correct and supportable and the Council wanted to go on record as supporting it.

Jack Neusner, a member of the Council, composed the motion that we are discussing now, again, and took that motion out of the letter that Bill Bennett himself wrote to Clarence Thomas of the EEOC.

It was the-- by the-- a general understanding the core basis upon which Bill Bennett's action rested. It was the core sentiment and statement of his stand.

That was so understood, I think, and I don't mean to contradict you, Frances-- that was so understood by many-- For example, I remember Louis Hector (?) saying he had to vote against the motion as did others-- had to vote against the motion because he disagreed with Bill Bennett on this position for affirmative action.

There were others who abstained, but there were many-- there were some who voted no, and I think it was clear that they knew what the-- that the motion-- what the origins of the motion were and what the impact and importance was.

Walter is also absolutely correct. Nothing will come of this for in fact Congress will in its wisdom bind us to supply goals and timetables. I am almost as certain of that of as I am certain of anything.

The only effect of the this would be symbolic in a sense, to say to Congress we may-- perhaps we must do it, but we have not been moved from our position or our arguments.

MR. KINGSTON: Louise then Bea(?)-- I am sorry, Anita then -- yes, go ahead.

MS. KERR: I am sorry. I would-- I would support Walter in his plea that this be withdrawn. However--

MR. KINGSTON: Could you speak up a little, please?

MS. KERR: I would support Walter in his plea that this be withdrawn.

However, I would suggest that the results-- the result of that action was in fact the legislation to which we are now responding.

MR. KINGSTON: Bea, did you want--

MS. HIMMELFARB: My remarks are entirely anticipated by Walter. I, too, want to endorse Walter's remarks and to strongly urge that the motion be withdrawn that it does--

that I think Mr. Cook put the matter very well.

At this point, that I think to raise again that issue is devisive. The issue has been settled. Congress may do what it likes. That is not within our perview at this point and I don't think that anything constructive is gained by rediscussing that issue in those terms now.

MS. SILVERS: To my knowledge, regardless of what one's interpretation of the Council's previously adopted position is, there has-- there was not a situation in which the Chairman of the Endowment and the Council were taking different positions.

And, what I have some concern about and I will join with the others in urging that this action not be taken at this time, is a situation in which a Chairman may make a decision and the Council will have already locked itself into a position prior to that Chairman's facing whatever needs to be faced.

I would hope that the Council would be in a position to discuss that with the Chairman at the appropriate time.

MR. KENNEDY: I would like to move to table the motion.

MR. KINGSTON: There is a motion-- there is a motion to table the motion. Do you have an addendum?

MR. KENNEDY: Indefinitely.

MR. KINGSTON: Indefinitely.

MR.   :   Second.

MR. KINGSTON: And it has been seconded. A motion to table does take precedence. Are there-- is there any other discussion?

(No response.)

MR. KINGSTON: All those in favor of the motion--

MR. RITCHESON: Mr. Chairman.

MR. KINGSTON: Yes?

MR. RITCHESON: I have heard from the distinguished members of this Council arguments--

MR. KINGSTON: Speak up, Charles, please.

MR. RITCHESON:--Arguments why this motion which I moved should be withdrawn. I am not disposed to do that.

I believe that there is a matter of conscience involved on this side as well. And I would like to see this matter resolved at this time.

Now, in a parliamentary sense, of course, this motion to table takes precedence over the existing motion and I have to ask, therefore, if it is in fact tabled, is this a way of getting rid of it altogether or will it be brought forward at a later date?

MR. KINGSTON: In terms of procedure, of course, you can move to reconsider the motion at any time.

Ellis.

MR. SANDOZ: I want to associate myself with opposition to tabling. I see no justification in this-- in the sort of apprehensiveness which has been expressed on this occasion.

We are reaffirming here a perfectly straight forward pair of statements, one of which is already on the record as being that of the Council; the other which is to say that we do commend the previous Chairman and the present Acting Chairman for their devotion to the principle of equal opportunity of the administration of this Agency.

Those are absolutely blameless statements to make. I think that they do not conflict with anybody's fundamental principles. The fact that we do not go into further detail, is a matter beside the point.

We are devoted, indeed, to equal opportunity and we do believe that equal opportunity is a matter of conscience, has been manifested and displayed both verbally and in act by Mr. Bennett and by Mr. Agresto and I think that it is perfectly proper and indeed perhaps more than proper that we affirm that at this particular juncture and not table.

MS. RHOME: Point of parliamentary procedure.

MR. KINGSTON: Yes.

MS. RHOME: I believe that the motion to table does not require any discussion and must be met immediately.

MR. KINGSTON: All those in favor of the motion to table, please raise a hand.

(A show of hands was seen.)

MR. KINGSTON: Those opposed to the motion to table--

(A show of hands was seen.)

MR. KINGSTON: The motion is defeated. We are back to consideration of the primary motion.

MR. ALLEN: I have a question.

MR. KINGSTON: Bill.

MR. ALLEN: I voted against tabling the motion not because I am not persuaded that perhaps it couldn't be withdrawn, but because it seems to me an inappropriate way to resolve the question.

I stopped at the Monmouth (?) College to give a lecture on the way over here under the title "America's Raw Nerve".

The subject of that lecture was this discussion in substance. I quite agree it is a sensitive matter. I quite agree it produces conflicts which seem nearly irresolvable.

I also have the opinion that we must regard our responsibilities as reaching beyond the immediate question of our personal sensibilities because it really is the fate of more than this Council and our friendships that is as stake.

I am reminded further that I wasn't, of course, present when the resolution was adopted. I did not participate in that and that reminds me of the cliche, of course, you can't drip in the same river twice.

And I would admonish the Council not to try bathing in the same river twice on this day. I would suggest that the motion be separated and that the reaffirmation of the new resolution be withdrawn, but the commendation which would be fitting presuming that this may be the last opportunity we have to do that, of our Acting Chairman to be acted upon.

MR. RITCHESON: If that were in the amendment, then I as mover of the motion will accept it.

MR. KINGSTON: You are accepting a division of the motion?

MR. RITCHESON: Yes.

MR. KINGSTON: All right. So the motion now stands in two parts, the prior part of the motion would be a reaffirmation of the February 1980--

MR. ALLEN: He was withdrawing that and amending it.

MR. KINGSTON: What is that?

MR. ALLEN: It was a withdrawal of the first part, amending the motion would to be commendation of our Acting Chairman.

MR. RITCHESON: That was my intention. It was to withdraw the first part, reaffirming something which does not need reaffirmation apparently since it is in our minutes, though I think in a parliamentary fashion you will have to have the permission of the second of the motion.

MR. KINGSTON: So the motion now stands as only the second part.

MR. RITCHESON: Commendation of the former Chairman and of the present Acting Chairman.

MS. : Can I ask for clarification of that motion?

MR. KINGSTON: Let me make sure that the seconder is accepting that modification of the motion. Allen.

MR. HART : The seconder does not accept, so the motion stands as it was originally worded.

MS. KERR: Would you-- could you read the second half of that motion, the exact wording?

MR. KINGSTON: The motion stands--

MR. RITCHESON: The Council takes this opportunity to commend the previous Chairman and the present Acting Chairman of the Endowment for their exemplary devotion to the principle of equal opportunity in administration of NEH.

MR. KINGSTON: Sam.

MR. COOK: Yes, I agree with Walter Berns. We have persuasive arguments, but I do want to comment on what Jeffrey Hart and what Ellis Sandoz said about race preference and treatment.

Now I know the courts have said that it is legitimat to use race as a conscious factor in the rectification of injustices in the past.

Blacks were excluded, deliberately. They were cursed deliberately. They were denied equal opportunity, deliberately, on conscious grounds.

So, in terms of the justice and the social order, in terms of any other kind of justice, it is perfectly legititmate to use race as a conscious factor to rectify injustices and wrongs and tragedies of the past and to deny this is to deny equal opportunity.

So it seems to me that the Affirmative Action Program timetables and goals are indispensible to a guaranteeing of equality and opportunity.

You know, it is one thing to speak of formal equality. It is quite another to speak of material equality, but the conditions are-- because of the whole burden the issue, it seems to me unfair to argue abstractly that Blacks have equality of opportunity and to talk about preferential treatment for Blacks now is simply nonsense. It is an absurdity, it seems to me.

So, if you excluded us on grounds of race, I say include us on grounds of race and these have the same logical statement and the same moral statement.

MR. KINGSTON: Jeff.

MR. HART: Well, of course, I have heard exactly that argument on countless occasions. The fact that the courts have said that race can be taken into account is simply one aspect of the situation.

Courts have changed their mind in the past and the question then becomes is this good public policy. I think that for public policy to be based upon racial considerations is a radical departure from what I would consider to be good American public policy.

And a person born in 1950 and 25 years old today, entering the labor market, did not own slaves, did not benefit from discrimination in some such way, to invoke the past in those terms, in terms of hiring, firing and promoting, seems to me to be not legitimate.

And that is why I think that this Council in its role of articulating what the policy of the Endowment should be has a moral responsibility to reaffirm its resolution in the past and to commend the executives in the Endowment who have been faithful to that policy.

MR. KINGSTON: Bea, please.

MS. HIMMELFARB: In view of the fact that I endorsed Mr. Cook's previous recommendation to withdraw the motion, I find myself in the paradoxical position now, while disagreeing with the substantive position on this matter-- I find myself in the odd position now of once again agreeing with part of Mr. Cook's statement.

Yes, indeed, I think this is the heart of the matter, the exclusion of the category of race and the inclusion of the category of race have as you say precisely the same logical status and moral status. They are both illogical and they are both immoral and it is precisely because I feel very strongly that they are profoundly immoral, that to include now the category of race, to make this a criteria of social policy, is precisely as immoral as it was to exclude it previously.

MR. COOK: Unless the condition-- the material is the same, in concrete empirical terms, when Blacks have equal status with Whites.

When to have equality of opportunity, the same chances, then you eliminate race as a category factor. But until that-- we arrive at that point, based upon the tyrrany of racism in the past on which Blacks did--- it seems to me that you are really sanctifying and moralizing injustice and freezing it into the social order and political system.

And this, to me, is immoral. Utterly immoral.

MS. HIMMELFARB: Material conditions are never the same for all people in all societies at any time whatsoever.

MR. COOK: Well that is the--

MS. HIMMELFARB: And now to make-- to make that the grounds for a difference of status is even more profoundly disquieting, it seems to me, than your previous statement.

That would mean that anyone who is poorer than anyone else, had somehow an inferior moral status than someone who is richer, anyone who is less bequeathed or bestowed with the natural gifts were somehow less moral than I--

MR. COOK: We are not speaking of individual cases.

We are speaking here in terms of broad social categories of racism.

MS. HIMMELFARB: Well even ---

MR. COOK: I would agree with you philosophically in terms of individual cases. You are right.

But here we are speaking of Whites and Blacks in terms of that this should be for power and opportunities within American history, the American social order.

John Dewey said that freedom means power. That is what--it means effective participation, the power to do and not to do.

And this is what Blacks have been denied equal opportunity of.

MR. KINGSTON: I had a call for the question.

MR. RITCHESON: Mr. Chairman. I want, as the mover of this motion, to make one final statement for my part.

I realize how very deeply the currents run. I realize how--

MR. KINGSTON: Could you move towards the microphone?

MR. RITCHESON: I realize how very emotional and how many important considerations are involved here.

It is for this very reason that I have made my motion this morning. This matter is important and cannot be simply ignored and hence, I thought, in my judgment it was right to bring it back to the Council again. It will come back, no doubt, many times in the future.

But it was, in my judgment, right and proper that this highly emotional important issue be presented once more.

MR. SANDOZ: Since I have been mentioned in the discussion, let me say that almost the last thing in the world I would like to do is to get into a debate with President Cook since I am overmatched and know it before I start.

But, I-- the spirit in which I think the-- this resolution should be perceived, and I hope accepted by the Council, is to reaffirm the principle of equal opportunity without going into details and specifics and mechanisms as to how equal opportunity may or may not properly or politically be best achieved and to commend the administration of this Agency whose record is exemplary in precisely the categories that I think are most concerned-- to those who have voiced opposition to the resolution.

The record of this administration and this Agency stands at the very top of the entire Federal bureaucracy in its exemplary adherence to the substance of equal opportunity and I believe that is constant with the convictions of every single member of this Council, and we are debating the question of mechanisms.

I would hope, therefore, in terms of the principle we can stand together and I would even hope that we could do it in a unanimous vote.

MR. KINGSTON: Frances.

MS. RHOME: I think this entire conversation is very wrenching, and it is particularly wrenching to me because the second part of this motion which asks us to endorse the actions of Bill Bennett and of John Agresto, two men in whom I am very fond, and although we disagreed on some principles that doesn't mean that we have a right to either condemn or condone one's thoughtful judgments that have brought them to certain considerations.

And I don't want to have to vote against this motion. I don't want to have to publicly say that I disapprove and that is what I am being forced to do because in this one action I cannot approve a public action, and this is not a straight forward comment as it has been described.

What this is saying is that this body approves the Director and the Acting Director's public defiance of a Federal regulation. And I am sorry, John, this is awkward. I dislike it intensely.

And I particularly dislike the fact that it -- this has been brought to the floor as a straight forward action when it is not. It is a devious action in order to bring this entire group to making the same public statement.

These things are hard for me to say.

MR. RITCHESON: May I call for a question, please, Mr. Chairman.

MR. KINGSTON: I still have one more comment because I recognized Anita, yes.

MS. SILVERS: This is really just a comment that I feel I am forced to make about the dimension of taste.

I think that one can admire moral actions regardless of whether one happens to agree with the consequences of those actions or not.

However, I think that actions move from being moral actions operating in the moral domain to becoming political actions when they require votes of confidence rather than the initiative of the moral agent.

I keep thinking about whether one would admire Socrates more if his friends and colleagues had voted in favor of his courageous action.

I don't think that that would have had anything-- add anything to his courage and I would just like to note that in this entire debate, I fear that what we are doing is moving the entire matter from the plane of individual moral action where we can respect each other's differences into a political action and it does disturb me a bit.

MR. KINGSTON: There is a motion on the floor. I believe everybody understands the motion and I will call for the vote. I would like a show of hands please.

Those in support of the motion as stated, please raise a hand.

(A show of hands was seen.)

MR. KINGSTON: Those opposed to the motion as stated.

(A show of hands was seen.)

MR. KINGSTON: Any abstentions?

(Mr. Gerald ~~Jeffrey~~ Hart and Mr. John Agresto abstained.)

MR. KINGSTON: All right. The motion passes.

Is there any other business before the Open Session recesses?

MS. SILVERS: Could you report the vote please?

MR. KINGSTON: The vote was 13 for, 7 against, and one abstention--

MS. : Two abstentions.

MR. KINGSTON: Two. I am sorry. Two abstentions.

Any other business before the Open Meeting of the Council?

(No response.)

MR. KINGSTON: We will take a 10 minute adjournment for coffee before we enter the Closed Session.

(Whereupon a brief recess was held.)

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EMBARGOED

For Release: Wednesday, January 22, 1986, 11:15 a.m. EST

HUMANITIES ENDOWMENT ACTING CHAIRMAN JOHN AGRESTO CRITICAL OF COMPLIANCE WITH EEOC REGULATIONS

In January 1984 the National Endowment for the Humanities (NEH) declined to comply with EEOC regulations requiring the Endowment to submit goals and timetables. The recent legislation reauthorizing NEH requires the agency to submit to the EEOC by January 31, 1986, goals and timetables for hiring women and minorities.

In complying with the law, NEH Acting Chairman John Agresto submitted the enclosed statement and attachments to EEOC Director Clarence Thomas. In the statement, Agresto observes: "We will abide by the law because we must. But faithfulness to the principle that no one should be judged on the basis of race or sex compels us to say that we view this occurrence as nothing short of tragic."

The Agresto statement concludes: "Soon America must choose. We must either follow the great principle that race and sex are not factors in rewarding and punishing people in this country, that distinctions based on race are, as they have always been, odious to a free people -- or we should state openly and candidly that we intend to perpetuate, encourage, and promote distinctions based on gender and race."

###

Statement by

John Agresto, Acting Chairman

National Endowment for the Humanities

January 22, 1986

For a number of years the National Endowment for the Humanities has publicly defended the principle that this nation should neither favor nor slight anyone because of race, color, national origin, religion, or gender. We have openly and proudly taken our stand with the moral principle that, in employment in this country and in this government, no one should be preferred or penalized, advanced or held back, because of ethnic background, sex, or race.

Last month the Congress of the United States put an end to this policy of non-discrimination at this agency. In an oblique way, through language set down in a report explaining this agency's re-establishment, the Congress instructed us to declare sex- and race-based goals and timetables for employment in this agency. We will abide by the law because we must. But faithfulness to the principle that no one should be judged on the basis of race or sex compels us to say that we view this occurrence as nothing short of tragic.

When this agency first said that it would not submit race and gender hiring goals, we asked what we thought was a simple moral question -- Should anyone be preferred or held back because of race or sex? We thought that to ask the question was to answer it. Blindness to a person's color or religion, gender or race was, we thought, the hallmark of civilized justice as embodied in this Republic. We assumed that justice was even more offended when such distinctions were propagated through the acts of the government of all the people.

Relying on the words of the great Civil Rights Act of 1964 that forbade all discrimination in employment opportunities, we had assumed that it was wrong to try to tailor a workforce along racial lines. We assumed that the intention to hire or promote people because their color or sex was "underrepresented" was as wrong as restricting the employment opportunities of other Americans because their groups were "overrepresented." But what we took to be wrong has now become the law.

Under the new demands of "affirmative action," expressed under such words as "goals" and "timetables," we are now required to state our intention to hire and promote individuals at this agency with an eye to their color, their race, and their gender. To the best of our knowledge this legislation signals the first time that the Congress has declared that individuals should be considered for employment on the basis of such criteria. We have made it as clear as we can that we think such a policy is unjust and wrong. This bold adventure into the business of legislating employment policy on the basis of immutable and irrelevant criteria raises significant constitutional questions, questions that ultimately will demand review and decision by our highest courts. This agency welcomes such a review.

I have taken this issue to be sufficiently important for me to have stated that I would rather leave this office than sign my name to a document that commits this Endowment to judging our fellow citizens on the basis of their race. I have been persuaded, however, that to walk away from this controversy because of these compunctions would not only do damage to the Endowment but would deflect consideration away from the issue at hand and confuse a public wrong with a matter of personal conviction.

We have heard it said that our position of consistent non-discrimination does not recognize the subtleties that differentiate goals from quotas. Quotas, we have been told, are narrow and unacceptable; but goals are flexible, goals are simply racial "targets," goals are benign. Yet no playing with words can sanitize the fact that goals, no less than quotas, call upon us to use a person's race or sex as a serious factor in hiring, firing, or promotion. Goals, quotas, timetables, targets -- whatever you wish to call the devices at hand -- all require us to take into account a person's race or sex when we look to fill our jobs. They ask us to perpetuate and promote distinctions based on race and color in this country.

Again, we have heard it said that racial-preference goals are only temporary expedients -- that soon, someday, perhaps, they will be eliminated. But if such a schedule is written down somewhere, we have yet to see it. So, we stand firm in the conviction that to favor or slight anyone on the basis of race or sex in hopes that discrimination will ultimately wither away is a practical and moral contradiction. If we wish to end discrimination, the only right way to do it is not to discriminate -- period.

We have also heard it argued that such discrimination is an evil only when certain groups are harmed by it. We hear it said that quotas and goals have been "successful," and that we should measure our actions by the end results, not by the means. Yet no one who believes in the idea of equality and equal opportunity for all should willingly take sides with devices that ask us to discriminate. We have yet to be persuaded that we should trim the principle of non-discrimination, and with it our moral sense, in the hope of good results. Once we give up the democratic principle that all of us are created equal, and substitute for equal opportunity the view that affirmatively discriminating on the basis of race is good, we twist ourselves into moral contortions that no amount of sophistry can straighten out.

Still, let no one suppose that in opposing race and sex discrimination we are secretly sheltering the the prerogatives of whites, or males, or any other particular group. Applying EEOC statistical measures as required under this law, we realized that this agency, in almost every category and in the highest professional ranks, is "overrepresented" (in the words of goals and timetables) with women, including black women. Women comprise 69 per cent of all positions at this agency. This agency is divided into five divisions -- three of them headed by women. Almost 10 per cent of our staff at the top professional ranks (GS-14/15) consists of black women. This is nine times the government average. We are, however, "underrepresented" in Asian, Indian, and Hispanic males and in Black males at certain professional and clerical ranks.

What a ridiculous posture this agency must now assume when, in carrying out these required "goals," we have to say to women, including black women, that they will not be judged equally with others, that others are being given a race and sex preference over them. Once we make race and sex legal factors in such matters, there will be no end to such offenses. And no end to the suspicion that many will feel that they were hired not because of their work or merit but to meet a timetable or satisfy a certain goal.

It is instructive to see how low our sense of justice has fallen in recent times. Men and women, we were once taught, were to be judged on the content of their character, not on the color of their skin. These required goals and timetables mock that view.

We were once taught that assigning special consideration to some individuals because of color, treating them differently because of their race, was a sin. This requirement makes that sin public policy.

Soon America must choose. We must either follow the great principle that race and sex are not factors in rewarding and punishing people in this country, that distinctions based on race are, as they have always been, odious to a free people -- or we should state openly and candidly that we intend to perpetuate, encourage, and promote distinctions based on gender and race.

This agency stood for the principle that, in a society so greatly and richly varied as ours, the only just rule was that all should be treated equally, with no one advanced, no one restrained, because of race or color or gender. That principle has, today, been overturned; and this day should not pass without some record of our objection, some indication of our regret.

NATIONAL ENDOWMENT FOR THE HUMANITIES
WASHINGTON, D.C. 20506

THE CHAIRMAN

January 21, 1986

Mr. Clarence Thomas
Chairman
Equal Employment Opportunity Commission
2401 E Street, N.W.
Washington, D.C. 20506

Dear Mr. Thomas:

Attached please find our EEOC submission in compliance with our Reauthorization Act, PL 99-194.

Because I fully agree with your recent statement that "the Civil Rights Act of 1964 prohibited employers from discriminating on the basis of race, color, sex, religion, or national origin" but that "unfortunately, this commitment soon gave way to a system of group preferences," I send these "goals and timetables" with great regret.

With you, I look forward to the time when these divisive distinctions are neither required nor requested.

If any deficiencies are discovered in this report, or if any additional information is required, please direct such an inquiry to me personally and I shall see to it that it is quickly attended to.

Sincerely,

John Agresto
Acting Chairman

National Endowment for the Humanities

Affirmative Action Plan

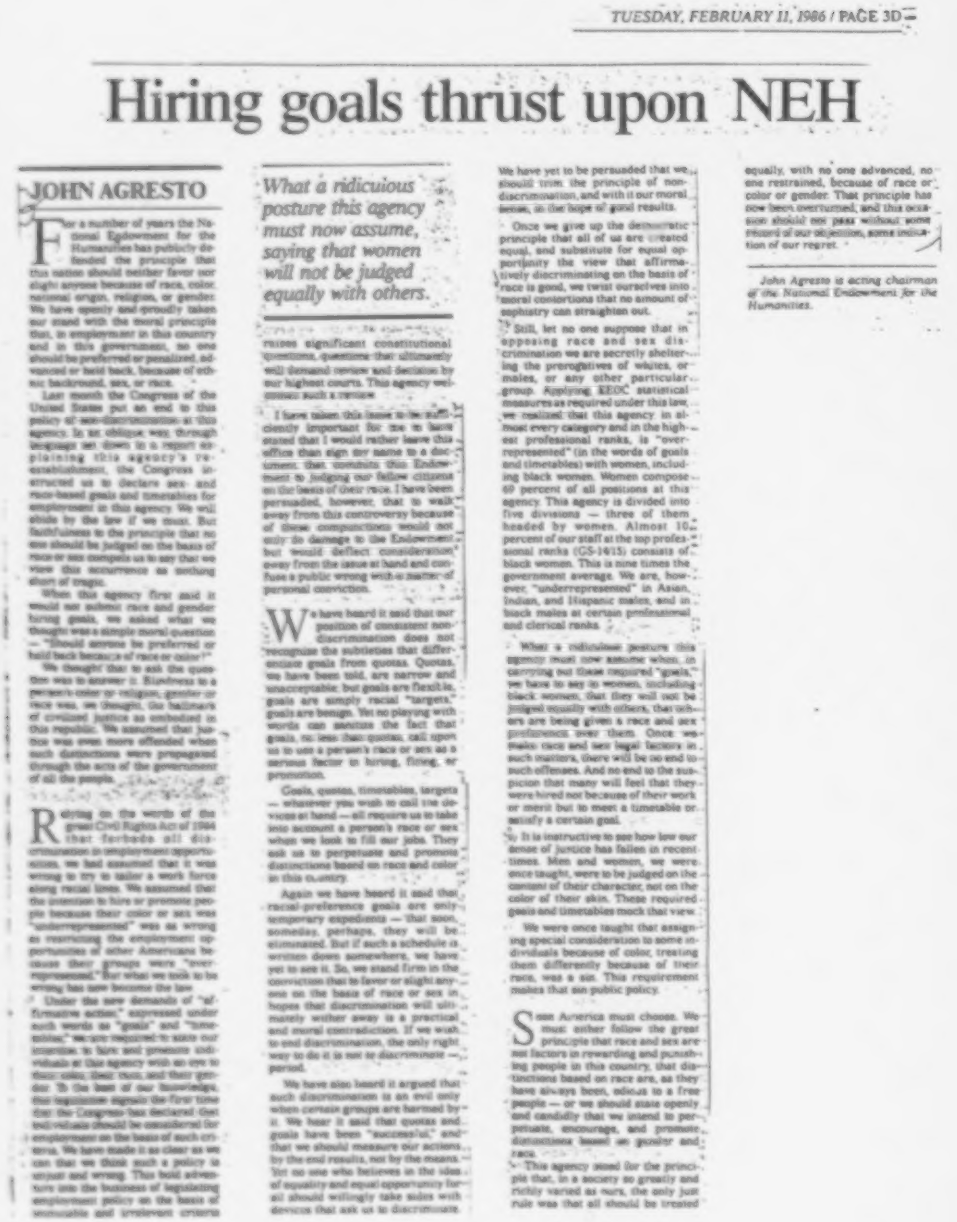
FY '86

John Agresto — Jan 21, 1986
John T. Agresto, Acting Chairman — Date

Susan Metts — Jan 21, 1986
Susan Metts, Acting Director
of Administration — Date

Carol M. Gordon — [illegible]
Carol M. Gordon, Director,
Office of Equal Opportunity — Date

[From the Washington Times]



TUESDAY, FEBRUARY 11, 1986 / PAGE 3D

Hiring goals thrust upon NEH

JOHN AGRESTO

For a number of years the National Endowment for the Humanities has publicly defended the principle that this nation should neither favor nor slight anyone because of race, color, national origin, religion, or gender. We have openly and proudly taken our stand with the moral principle that, in employment in this country and in this government, no one should be preferred or penalized, advanced or held back, because of ethnic background, sex, or race.

Last month the Congress of the United States put an end to this policy of non-discrimination at this agency. In an oblique way, through language set down in a report explaining this agency's reestablishment, the Congress instructed us to declare sex- and race-based goals and timetables for employment in this agency. We will abide by the law if we must. But faithfulness to the principle that no one should be judged on the basis of race or sex compels us to say that we view this occurrence as nothing short of tragic.

When this agency first said it would not submit race and gender hiring goals, we asked what we thought was a simple moral question — "Should anyone be preferred or held back because of race or color?"

We thought that to ask the question was to answer it. Blindness to a person's color or religion, gender or race was, we thought, the hallmark of civilized justice as embodied in this republic. We assumed that justice was even more offended when such distinctions were propagated through the acts of the government of all the people.

Relying on the words of the great Civil Rights Act of 1964 that forbade all discrimination in employment opportunities, we had assumed that it was wrong to try to tailor a work force along racial lines. We assumed that the intention to hire or promote people because their color or sex was "underrepresented" was as wrong as restricting the employment opportunities of other Americans because their groups were "overrepresented." But what we took to be wrong has now become the law.

Under the new demands of "affirmative action," expressed under such words as "goals" and "timetables," we are required to state our intention to hire and promote individuals at this agency with an eye to their color, their race, and their gender. To the best of our knowledge, this requirement signals the first time that the Congress has declared that individuals should be considered for employment on the basis of such criteria. We have made it as clear as we can that we think such a policy is unjust and wrong. This bold adventure into the business of legislating employment policy on the basis of immutable and irrelevant criteria [illegible] raises significant constitutional questions, questions that ultimately will demand review and decision by our highest courts. This agency welcomes such a review.

What a ridiculous posture this agency must now assume, saying that women will not be judged equally with others.

I have taken this issue to be sufficiently important for me to have stated that I would rather leave this office than sign my name to a document that commits this Endowment to judging our fellow citizens on the basis of their race. I have been persuaded, however, that to walk away from this controversy because of these compunctions would not only do damage to the Endowment but would deflect consideration away from the issue at hand and confuse a public wrong with a matter of personal conviction.

We have heard it said that our position of consistent nondiscrimination does not recognize the subtleties that differentiate goals from quotas. Quotas, we have been told, are narrow and unacceptable; but goals are flexible, goals are simply racial "targets," goals are benign. Yet no playing with words can sanitize the fact that goals, no less than quotas, call upon us to use a person's race or sex as a serious factor in hiring, firing, or promotion.

Goals, quotas, timetables, targets — whatever you wish to call the devices at hand — all require us to take into account a person's race or sex when we look to fill our jobs. They ask us to perpetuate and promote distinctions based on race and color in this country.

Again we have heard it said that racial-preference goals are only temporary expedients — that soon, someday, perhaps, they will be eliminated. But if such a schedule is written down somewhere, we have yet to see it. So, we stand firm in the conviction that to favor or slight anyone on the basis of race or sex in hopes that discrimination will ultimately wither away is a practical and moral contradiction. If we wish to end discrimination, the only right way to do it is not to discriminate — period.

We have also heard it argued that such discrimination is an evil only when certain groups are harmed by it. We hear it said that quotas and goals have been "successful," and that we should measure our actions by the end results, not by the means. Yet no one who believes in the idea of equality and equal opportunity for all should willingly take sides with devices that ask us to discriminate. We have yet to be persuaded that we should trim the principle of nondiscrimination, and with it our moral sense, in the hope of good results.

Once we give up the democratic principle that all of us are created equal, and substitute for equal opportunity the view that affirmatively discriminating on the basis of race is good, we twist ourselves into moral contortions that no amount of sophistry can straighten out.

Still, let no one suppose that in opposing race and sex discrimination we are secretly sheltering the prerogatives of whites, or males, or any other particular group. Applying EEOC statistical measures as required under this law, we realized that this agency in almost every category and in the highest professional ranks, is "overrepresented" (in the words of goals and timetables) with women, including black women. Women compose 69 percent of all positions at this agency. This agency is divided into five divisions — three of them headed by women. Almost 10 percent of our staff at the top professional ranks (GS-14/15) consists of black women. This is nine times the government average. We are, however, "underrepresented" in Asian, Indian, and Hispanic males, and in black males at certain professional and clerical ranks.

What a ridiculous posture this agency must now assume when, in carrying out these required "goals," we have to say to women, including black women, that they will not be judged equally with others, that others are being given a race and sex preference over them. Once we make race and sex legal factors in such matters, there will be no end to such offenses. And no end to the suspicion that many will feel that they were hired not because of their work or merit but to meet a timetable or satisfy a certain goal.

It is instructive to see how low our sense of justice has fallen in recent times. Men and women, we were once taught, were to be judged on the content of their character, not on the color of their skin. These required goals and timetables mock that view.

We were once taught that assigning special consideration to some individuals because of color, treating them differently because of their race, was a sin. This requirement makes that sin public policy.

Soon America must choose. We must either follow the great principle that race and sex are not factors in rewarding and punishing people in this country, that distinctions based on race are, as they have always been, odious to a free people — or we should state openly and candidly that we intend to perpetuate, encourage, and promote distinctions based on gender and race.

This agency stood for the principle that, in a society so greatly and richly varied as ours, the only just rule was that all should be treated equally, with no one advanced, no one restrained, because of race or color or gender. That principle has now been overturned, and this occasion should not pass without some record of our objection, some indication of our regret.

John Agresto is acting chairman of the National Endowment for the Humanities.

NEH Dir. Administration ltr
tracing events leading up to
NEH decision to withold goals
and timetables; July 17, 1986

NATIONAL ENDOWMENT FOR THE HUMANITIES

WASHINGTON, D.C. 20506

July 17, 1986

Carol C. Fox
Counsel
Committee on Governmental Affairs
340 SDOB
Washington, D.C. 20510

Dear Carol:

As promised, I am enclosing a copy of the draft bill sponsored by Congressmen Martinez and Hawkins in the Subcommittee on Employment Opportunities of the House Committee on Education and Labor. The draft bill's preamble states that its aim is "(t)o require Federal entities that are subject to laws prohibiting employment discrimination to file with the Equal Employment Opportunity Commission reports regarding their compliance with such laws; and to compel such entities to file such reports." The fact that such a bill is offered strongly suggests that at best the requirements of EEOC Management Directives requesting goals and timetables data are ambiguous. As GAO comes to study the past NEH policy in this area, it may find it informative that Congressmen directly concerned with the issue have concluded that it is necessary to pass legislation compelling the filing of goals and timetables by federal agencies.

I do not envy GAO its task. There are an incredible number of acts to this drama beginning with the letter of Attorney General Smith on July 19, 1983, to Chairman Clarence Thomas stating that it was the opinion of the Department of Justice that DOJ was not bound to submit the data. A July 26, 1983, memorandum from DOJ followed that stated unequivocally that "the EEOC is without statutory authority to impose such employment 'goals' on Federal agencies." Many hearings before Congressional committees followed. In one of the most recent, before the same Subcommittee that has now been offered the new legislation on July 23, 1985, Congressman Williams offered the opinion that while NEH might be "skirting" the law, he was not prepared to accuse NEH of violating law. Also during the past year and a half, the Senate has confirmed Mr. Bennett, Mr. Willkie, and Mr. Carnes to positions in the Department of Education and Mr. James Miller to head OMB without any question as to whether they "broke" the law when they participated in NEH's and the FTC's decision not to file. When Mr. Curran was nominated to the NEH chairmanship he was asked if he would file. He replied that he would comply with the law. The Senator, I can't recall which one, pressed him on the point because the Senator knew that this was an area of great ambiguity.

In short, I do not know that GAO will be able to come up with an opinion on what "the law" requires. I suppose it is best to emphasize that when Congress clarified the ambiguity and made its intent known to NEH through our reauthorization legislation, John quickly filed the report. He has also stated repeatedly that Congressional action vis-a-vis NEH has made it obvious to him what Congress expects of him in his new position and that the Archives will file goals and timetables if he is confirmed as Archivist.

I hope this material is of some use. Thank you for your help.

Sincerely,

Susan Metts

Susan Metts
Director of Administration

Enclosure

WILLIAM V. ROTH, JR., DELAWARE, CHAIRMAN

TED STEVENS, ALASKA
CHARLES McC. MATHIAS, JR., MARYLAND
WILLIAM S. COHEN, MAINE
DAVE DURENBERGER, MINNESOTA
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JOHN M. DUNCAN, STAFF DIRECTOR
MARGARET P. CRENSHAW, MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON
GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510

July 11, 1986

The Honorable Charles Bowsher
Comptroller General of the United States
General Accounting Office
Washington, DC 20548

Dear Mr. Bowsher:

As you know, the Committee is considering the nomination of John Agresto to be Archivist of the United States.

Mr. Agresto was Acting Chairman of the National Endowment for the Humanities from February, 1985 until May, 1986. While in that position, Mr. Agresto refused to comply with an EEO Management Directive requiring submission of plans involving goals and timetables to correct underrepresentation of certain groups in the Federal workforce.

EEO Management Directive 707 was issued in 1981 and updated in 1983 (as EEO-MD-707a). The NEH, under former Chairman Bennett, complied with the Directive for FY 1982, but Mr. Bennett refused to comply for FY 1983 on the grounds that it would be wrong. Mr. Agresto, as Acting Chairman, also refused to comply for FY 1984. The NEH reauthorization act, P.L. 99-194, explicitly directed the agency to comply with EEO directives, and Agresto did comply, under protest, for FY 1985.

To assist the Committee in its consideration of the nomination, I request that GAO prepare a legal analysis on the question of whether federal officers are obligated to comply with EEO directives. Background material on this issue has been furnished to your General Counsel's office.

Sincerely,

William V. Roth, Jr.
Chairman

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-223771 July 28, 1986

The Honorable William V. Roth, Jr.
Chairman, Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

This is in response to your letter dated July 15, 1986, requesting our opinion as to whether Mr. John Agresto, as Acting Chairman of the National Endowment for the Humanities (NEH) from February 1985 to May 1986, was obligated to comply with Equal Employment Opportunity Commission (EEOC) Management Directives requiring the agency to submit data concerning the underrepresentation of minority groups and hiring goals for those groups for fiscal year 1984. For the reasons stated below, we conclude that Mr. Agresto was legally obligated to comply with these EEOC directives.

BACKGROUND

The anti-discrimination provisions of Title VII of the Civil Rights Act of 1964, as extended to federal employees by the Equal Employment Opportunity Act of 1972,[1] provide in section 717(b) that federal agencies must prepare national and regional equal employment opportunity plans in order to maintain "an affirmative program of equal employment opportunity for all * * * employees and applicants for employment * * *." Section 717(b), as amended, charges the EEOC with responsibility for reviewing the agencies' plans and monitoring their implementation, and states that, in order to carry out its responsibilities under the statute, the Commission "shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate* * *."2/

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[1] Pub. L. No. 92-261, 86 Stat. 103, March 24, 1972.

In 1981, EEOC issued Management Directive 707 (EEO-MD 707), which instructed agencies to develop, submit, and implement equal employment and affirmative action plans for the period covering fiscal years 1982 through 1986. The directive required each agency to identify underrepresentation of minority groups in its workforce by comparing the percentage of sex-specific racial and ethnic groups in various employment categories with the percentage of their representation in the relevant civilian labor force, and then to establish long-term (5-year) and annual numerical hiring goals for the underrepresented groups.

Management Directive 707 was updated in 1984, when EEOC issued Management Directive 707A (EEO-MD 707A). This latter directive provided instructions for agencies to use in conducting annual updates of their long-term hiring goals and reporting their annual affirmative action accomplishments to EEOC.

The NEH complied with the requirements of Management Directive 707 through fiscal year 1982. However, in its report to EEOC for fiscal year 1983, NEH, under Chairman William J. Bennett, refused to submit the required indices of underrepresentation or to state any numerical hiring goals. Chairman Bennett, in his letter to the EEOC accompanying NEH's fiscal year 1983 report, stated that:

> "[W]e cannot provide the requested indices of 'underrepresentation' nor the statement of numerical 'goals' concerning employment at the Endowment. We note that the Justice Department has recently taken the position that EEOC

2/ Section 717(b), as originally enacted, provided that the Civil Service Commission (CSC) would be responsible for administering the statute. The CSC's responsibilities were transferred to EEOC by Reorganization Plan No. 1 of 1978, 43 Fed. Reg. 19,807, reprinted in 1978 U.S. CODE CONG. & AD. NEWS 9799. The amended provisions of section 717(b) are codified in 42 U.S.C. § 2000e-16(b) (1982).

> exceeds its authority by seeking such information. In addition to the question of authority there is also a question of principle--whether race or ethnicity or gender should influence employment policies. And we strongly believe that different or special treatment by this agency on the basis of these characteristics offends our best principles as a nation."

The Justice Department's position on which Chairman Bennett relied is set forth in several Departmental documents which did not purport to bind any federal agency. These documents included a letter to the EEOC in which the Department declined to include numerical hiring goals in its affirmative action report for fiscal year 1982, a policy statement which the Attorney General issued to the Department's components in 1983, advising these components that the Department's equal employment opportunity program would not include hiring goals, and an internal legal memorandum in which the Department's Civil Rights Division commented on a 1983 draft of EEOC Management Directive 707A. In this legal memorandum, the Civil Rights Division expressed the view that the EEOC could not require agencies to submit underrepresentation data and minority hiring goals because: (1) section 717 of Title VII mandates the elimination of discrimination in federal employment but does not require the correction of underrepresentation through the use of hiring goals; (2) the collection of numerical hiring goals from federal agencies violates section 703(j) of Title VII, which states that nothing in Title VII shall be interpreted as requiring an employer to grant preferential treatment to a racial group on account of a racial imbalance in the employer's workforce; and (3) the government's use of hiring goals benefiting individuals not identified as victims of discrimination violates the constitutional equal protection rights of non-minority employees and applicants for employment.

In submitting NEH's affirmative action report for the next fiscal year, 1984, Acting Chairman Agresto omitted underrepresentation data and minority hiring goals. Apparently, Mr. Agresto omitted this information for the reasons which had been expressed by his predecessor.[3]

On December 20, 1985, the Arts, Humanities, and Museums Amendments of 1985, [4] was enacted to reauthorize NEH. Section 107(6) of the Act added a new subsection (e) to section 7 of NEH's organic legislation, 20 U.S.C. § 956(e) (Supp. III 1985), providing that:

> "Not later than January 31, 1986, the Chairperson of the National Endowment for the Humanities shall transmit to the Equal Employment Opportunity Commission each plan and each report required under any regulation or management directive that is issued by the Commission and is in effect on December 20, 1985."

Shortly after the enactment of section 107(6), Acting Chairman Agresto provided EEOC with NEH's affirmative action report for fiscal year 1985 and included the required underrepresentation data and hiring goals.[5]

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[3] See Mr. Agresto's testimony in The Equal Employment Opportunity Commission Collection of Federal Affirmative Action Goals and Timetables and Enforcement of Federal Sector EEO Complaints: Hearing Before the Subcomm. on Employment Opportunities of the House Comm. on Education and Labor, 99th Cong., 1st Sess. 143-146 (1985) (hereinafter cited as Hearings).

[4] Pub. L. No. 99-194, 99 Stat. 1332.

Against this background, you question whether Mr. Agresto was legally bound to comply with the EEOC Management Directives in filing the NEH's affirmative action report for fiscal year 1984.

DISCUSSION

As noted previously, section 717(b) of Title VII, as amended, gives EEOC the responsibility for collecting and evaluating agencies' equal employment opportunity plans and provides that, in discharging this responsibility, the Commission "shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate * * *." Section 717(b) then specifically states that the head of each department and agency subject to the statute "shall comply with such rules, regulations, orders, and instructions * * *." (Emphasis added.) Accordingly, under the express terms of section 717(b), agency heads are legally bound to comply with the directives which EEOC issues pursuant to that section.

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[5] It should be noted that, although section 107(6) eliminated any question on NEH's part concerning its obligation to comply with the EEOC directives, it does not appear that Congress viewed section 107(6) as imposing any new legal responsibility on the agency. Rather, the legislative history of section 107(6) generally indicates that Congress regarded that section as a reaffirmation of NEH's existing legal obligation to comply with the EEOC directives, made necessary by the agency's failure to fulfill that obligation. See H. Rep. No. 274, 99th Cong., 1st Sess. 23, 24 (1985) ("This Committee and others have repeatedly indicated in oversight hearings that * * * [NEH's failure to file the full affirmative action plan] is totally contrary to the Congress' wishes." See also 131 Cong. Rec. H8679 (daily ed. Oct. 10, 1985) (Statement of Rep. Collins) (NEH "openly chose to ignore the law"; enactment of section 107(6) would make it "clearly understood that all agencies shall comply with the Federal laws, not may comply.") But see 131 Cong. Rec. H7740 (daily ed. Sept. 24., 1985) (Statement of Rep. Frenzel) (Section 107(6) would "raise the administrative duties--and therefore cost" of NEH, and would "expand the original intent of this law.")

Given the explicit statutory mandate in section 717(b), it is our view that an agency head could lawfully refuse to comply with an EEOC directive issued under that section only if the directive had been invalidated by competent judicial authority. We are not aware of any judical decision holding that the EEOC requirements for underrepresentation data and minority hiring goals exceed the scope of the Commission's authority under section 717(b). Nor, on a more general level, are we aware of any court cases holding that section 703(j) of Title VII or the equal protection clause of the fourteenth amendment prohibits an employer such as the Federal Government from adopting minority hiring goals.[6]

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[6] In fact, we note that, in United Steelworkers v. Weber, 443 U.S. 193 (1979), the Supreme Court construed section 703(j) and other provisions of Title VII as permitting employers to voluntarily adopt race-conscious affirmative action programs benefiting individuals who have not been identified as victims of discrimination.

After the Justice Department adopted its position concerning the legality of the EEOC directives and Acting Chairman Agresto refused to comply with those directives, the Supreme Court issued a decision upholding the principles it had expressed in Weber. See Local Number 93, International Association of Firefighters v. City of Cleveland, No. 84-1999, slip op. at 13-15 (U.S. July 2, 1986). In another recent Supreme Court opinion, Wygant v. Jackson Bd. of Educ., 106 S. Ct. 1842 (1986), the Court held that a school board's layoff plan extending preferential treatment to minority employees not shown to be victims of past discrimination violated the equal protection clause of the fourteenth amendment, but it indicated that "less intrusive" affirmative action measures such as minority hiring goals would pass constitutional muster. 106 S. Ct. at 1851, 1852.

Accordingly, in the absence of any binding decision which would serve to invalidate the EEOC Management Directives either explicitly or by necessary implication, agency heads are obligated under the terms of section 717(b) to comply with those directives. On this basis, we conclude that Mr. Agresto was legally bound to comply with the EEOC directives in filing NEH's affirmative action report for fiscal year 1984.

We trust that the above information is responsive to your inquiry. Also, as your staff requested, we are enclosing copies of two Supreme Court decisions relating to this matter.

Sincerely yours,

Milton J. Socolar
for Comptroller General
of the United States

Enclosures

NARA affirmative action accomplishment -FY'85 and plan - FY'86
for handicapped individuals;
May 6, 1986

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

MAY 6 1986

Mr. Douglas J. Bielan, Director
Public Sector Programs
Equal Employment Opportunity Commission
2401 E Street, NW
Washington, D.C. 20507

Dear Mr. Bielan:

Enclosed are the FY 1985 Affirmative Action Accomplishment Report and FY 1986 Affirmative Action Program Plan for Hiring, Placement and Advancement of Handicapped Individuals, for the National Archives and Records Administration (NARA).

Our accomplishment report is for the period beginning April 1, 1985, when NARA became an independent agency.

Any questions about these reports should be referred to Mrs. Della Arvo on 724-1513.

Sincerely,

FRANK G. BURKE

FRANK G. BURKE
Acting Archivist
of the United States
(202) 523-3134

Enclosure

cc: Official & Reading files - NAPP
N NA

NAPP:AAARVO:04/30/86

Concur: NAPP 5-1-86 NAP HJK 5-5-86 NA

NARA affirmative action accomplishment - FY'85 and plan - FY'86 for minorities and women; Aug. 8, 1986

National Archives
Washington, DC 20408

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

AUG 8 1986

Mr. Douglas J. Bielan, Director
Public Sector Programs
Equal Employment Opportunity Commission
2401 E Street, NW
Washington, DC 20507

Dear Mr. Bielan:

Enclosed are the FY 1985 Accomplishment Report of Affirmative Action for Minorities and Women and the FY 1986 Annual Update of Affirmative Action Program for Minorities and Women, for the National Archives and Records Administration (NARA).

Our accomplishment report is for the period beginning April 1, 1985, when NARA became an independent agency.

Any questions about these reports should be referred to Mrs. Della Arvo on 724-1513.

Sincerely,

Frank G. Burke

FRANK G. BURKE
Acting Archivist
of the United States

Enclosure

[illegible]

Congressional Research Service:
"GAO Monitoring of Compliance
with Affirmative Action Plans of
Federal Agencies", July 8,1985

Congressional Research Service
The Library of Congress

Washington, D.C. 20540

ADMINISTRATIVE ENFORCEMENT OF AFFIRMATIVE ACTION BY FEDERAL EEO AGENCIES AFTER FIREFIGHTERS LOCAL UNION NO. 1784 v. STOTTS

Charles V. Dale
Legislative Attorney
American Law Division
July 8, 1985

II. EEOC Monitoring of Compliance with Affirmative Action Plans of Federal Agencies

The EEOC is reported to be actively reviewing its requirement that federal departments and agencies include minority hiring goals and timetables in the annual equal employment opportunity plans mandated by sec. 717 of title VII.[33/] The authority for that requirement derives from several sources. Title VII of the 1964 Civil Rights Act as extended to the federal government in 1972,[34/] states a policy that personnel actions in the federal government "shall be made free from any discrimination based on race, color, religion, sex, or national origin." To implement that policy, title VII requires federal departments and agencies to maintain "an affirmative program of equal employment opportunity for all employees...and applicants for employment" and to submit national and regional equal employment opportunity plans to the EEOC each year for the EEOC's review and approval.[35/] Moreover, title VII gives the EEOC the authority "to issue such rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities" and mandates that the heads of federal departments and agencies "comply with such rules, regulations, orders, and instructions...."[36/]

Even apart from the 1972 amendments, federal agencies are obligated to maintain affirmative programs of equal employment opportunity. Executive Order 11246, issued in 1965, articulated a policy of nondiscrimination in federal

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[33/] See, 119 LRR at [illegible] (5/20/85). In October 1984, EEOC commissioners reportedly voted unanimously to review the 1981 agency management directive setting out instructions to federal agencies on their EEO and affirmative action obligations. That directive is scheduled to expire at the end of fiscal 1986.

[34/] 42 U.S.C. 2000e-16.

[35/] Id., sec. 2000e-16(b)(1).

[36/] Id., [illegible] e-16(b).

employment and directed federal agencies to establish "positive" programs of equal employment opportunity, subject to periodic review of the Civil Service Commission. Executive Order 11478 in 1969 reaffirmed that policy and obligated federal agencies to maintain "affirmative" programs of equal employment opportunity, subject to review and evaluation by the Civil Service Commission. In 1978 the EEOC assumed the Civil Service Commission's duties under the order.[37]

Finally, it should be noted that the Civil Service Reform Act of 1978 requires federal departments and agencies to undertake special minority recruitment programs in order "to eliminate underrepresentation of minorities in various categories of Civil Service employment...."[38] Under regulations issued by the Office of Personnel Management all agencies must include their plans for minority recruitment in the EEO plans which they submit to the EEOC each year. Such plans must include annual specific determinations of underrepresentation for each group and must be accompanied by quantifiable indices by which progress towards eliminating underrepresentation can be measured.[39] The EEOC was directed by the act to "establish the guidelines" for carrying out the recruitment programs and to make the initial determinations of underrepresentation intended to be remedied by the program.[40]

There would thus appear to be ample authority for EEOC enforcement of affirmative action on other federal departments and agencies, whether by means of goals and timetables or otherwise. At the same time, however, this does not necessarily mean that EEOC is bound by law to require goals and timetables, in lieu of other affirmative action measures, in federal agency plans under sec. 717. The legislative history of the federal employee provisions of the 1972 Amendments is largely silent as to the intended form of "affirmative action" required by that section. The Senate Committee Report on the legislation,[41] beyond reiterating the necessity for Commission review of the affirmative action plans, provides little specific guidance on the question, although floor remarks by Senator Cranston, author of the Committee amendment that became sec. 717, may be somewhat more suggestive. At one point in describing his amendment, Senator Cranston stated that it "requires that federal agencies make a special effort to employ and promote qualified minority persons according to their relative proportions in the population of the area surrounding area field offices."[42] This emphasis on proportional representation would seem correlative to the requirement imposed on executive agencies by the 1978 Civil Service Act "to eliminate underrepresentation of minorities in the various categories of civil service employment within the federal service..."[43]

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[37] Reorganization Plan No. 1 of 1978. The EEOC's authority is also buttressed by Executive Order 12067, issued in 1978. That order gave the EEOC the lead role among federal agencies in coordinating and setting the standards for enforcing equal employment opportunity requirements.

[38] 5 U.S.C. 7201(c).

[39] 5 C.F.R. 720.205(b).

[40] 5 U.S.C. 7201(d).

The issue of minority preferences and quota relief arose more generally during debate on the 1972 amendments when Congressman Dent offered an amendment in a manner of a substitute to a committee reported version which transferred all Department of Labor authority to enforce E.O. 11246 to EEOC and provided further that:

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[41] Senate Report No. 92-415 (S. 2515), 92d Cong., 1st Sess., p. 14 (1971).

[42] 118 Cong. Rec. 4929 (1972).

[43] 5 U.S.C. 7201().

> [t]he Commission shall be prohibited from imposing or requiring a quota or preferential treatment with respect to the number of employees or percentages of employees of any race, color, religion, sex, or national origin.[44]

Congressman Puchinski questioned Mr. Dent closely on the import of this section, and in the resulting discussion Mr. Dent made it clear that he intended the provision to prohibit all government agencies from imposing any form of standards concerning the number of minority workers employed.[45] The Dent Amendment was defeated. On the Senate side, the issue resurfaced when Senator Dirksen offered two amendments to prohibit federally ordered "preferential treatment" of minorities[46] or the employment of "persons of a particular race, or a particular religion, or a particular national origin, or a particular sex in either fixed or variable numbers, proportions, percentages, quotas, or ranges."[47] The latter, opponents argued, could be read "to deprive even the courts of any power to remedy clearly proven cases of discrimination."[48] Both measures were likewise defeated by a substantial margin.

Thus, the legislative history indicates that with the issue squarely presented, the 92d Congress repeatedly deflected attempts to limit the discretion of the federal courts and administrative agencies, including the EEOC, to enforce affirmative action remedies. That history, however, does not disclose any congressional specification of measures as being mandatory upon the Commission in evaluating the affirmative action plans of other federal agencies, or otherwise achieving the goal of a proportionally representative federal workforce articulated by Senator Cranston. Accordingly, in the absence of clearer legislative guidance, it is arguably within the discretion of the Commission to require, or not, the use of goals and timetables by other federal departments and agencies in their pursuit of "an affirmative program of equal employment opportunity for all...employees and applicants for employment..." For example, instead of the goals and timetables approach, the Commission would presumably be authorized to require "equal employment opportunity" programs designed to promote upward mobility through increased emphasis on minority recruitment, training, career development, and enhanced EEO complaint processing, etc. This is not to say, however, that the EEOC is constrained by Stotts to jettison goals and timetables for some other affirmative action approach to federal employee EEO. Because, as noted above, the present approach would seem authorized by various federal laws, and does not depend for enforcement on judicial action, the situation appears to fall outside the purview of Stotts, particularly as interpreted by later courts.

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[44] 117 Cong. Rec. 31984 (1971).

[45] 117 Cong. Rec. 31975 (1971).

[46] 118 Cong. Rec. 4931 (1972).

[47] 118 Cong. Rec. 1661 (1972).

[48] 118 Cong. Rec. 1675 (1972).

III. Hiring Goals and Timetables Under Executive Order 11246

Executive Order 11246, as amended, requires all contractors and subcontractors with the federal government to assure the government that they will not discriminate in employment on the basis of race, creed, color, sex, or national origin, and, in addition, that they will "take affirmative action to ensure that applicants are employed, and that employees are treated during employment" without discrimination on these grounds. The order further requires contractors and subcontractors to file periodic compliance reports with the government, and provides that failure to comply with these contractual undertakings may result in termination of the contract and debarment from future government contracts.[49]

Executive Order 11246, like its predecessors, contains no precise definition of the term "affirmative action". It simply states:

> Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

However, OFCCP regulations flesh out the employer's contractual obligation under the executive order. The regulations require a contractor, _inter alia_, to analyze its workforce to identify deficiencies in its utilization of women and minorities. Where it is determined that underutilization exists, contractors must develop numerical goals and timetables to eliminate these deficiencies.[50] Written affirmative action plans are required of all federal prime contractors and subcontractors with 50 or more employees and a contract of $50,000 or more.[51] Although the Supreme Court has not definitively ruled on the issue, the executive order program has been sustained by a series of appeals court decisions as applied to federal construction contractors.[52]

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[49] Executive Order 11246 was not the first executive order requiring nondiscrimination clauses in government contracts. President Roosevelt issued the first such order in 1941, requiring all defense contracts to contain clauses barring employment discrimination by the contractor on the basis of race, creed, color, or national origin. E.O. 8802 (June 24, 1941). Not until 1961, however, were federal contractors required not only not to discriminate but also to take "affirmative action." See, Note, "Executive Order 11246: Anti-Discrimination Obligations in Government Contracts," 44 New York University Law Review 590 (1969).

[50] 41 C.F.R. 60-2.10 _et seq_.

[51] 41 C.F.R. 60-2.1

For several reasons, many of which are outlined in the first portion of this report, the Court's Stotts ruling would seem at best to have only marginal implications for the executive order program. First, in contrast to that decision, affirmative action plans adopted by contractors to satisfy OFCCP requirements may be said to be "voluntary" in the sense that although a condition to doing business with the government, they are not imposed through judicial intervention. Second, at least insofar as the hiring aspects of any contractor affirmative action plan is concerned, seniority considerations would presumably not be involved nor would the interests of white workers otherwise seem affected in any impermissible fashion. A closer question may arise, however, to the extent that promotion goals and timetables are required since, as noted, those are generally more strictly scrutinized by the courts for their adverse impact on whites. Additionally, the executive order program is enforced by the Department of Labor, an agency arguably "competent" in the Bakke sense, to make findings and formulate appropriate remedies for discrimination in the federal contracting area. As such, the program's use of goals and timetables would seem more likely to fall within the zone of permissible affirmative action defined by the trilogy of Supreme Court cases, Bakke/Weber/ Fullilove,[53] than to transgress any limits imposed by Stotts. Indeed, this appears generally in accord with the apparent position of Labor Secretary Brock who, in recently reported remarks, seemed to express support for goals-oriented affirmative action to enforce the executive order.[54]

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[52] E.g., Contractors Ass'n of Eastern Pennsylvania v. Secretary of Labor, 442 F. 2d 159 (3d Cir. 1971), cert. denied, 404 U.S. 854 (1972); Southern Illinois Builders Ass'n v. Ogilvie, 471 F. 2d 680 (7th Cir. 1972).

[53] See Fullilove v. Klutznick, 448 U.S. 448 (1980).

Charles V Dale

Charles V. Dale
Legislative Attorney
American Law Division
July 8, 1985

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[54] See, "Brock Backs Affirmative Action," Washington Post, P. A4 (June 25, 1985).

PRESIDENTIAL SELECTION PROCESS MATERIALS

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United States Senate

COMMITTEE ON
GOVERNMENTAL AFFAIRS
SUBCOMMITTEE ON
GOVERNMENTAL EFFICIENCY AND THE DISTRICT
OF COLUMBIA
WASHINGTON, D.C. 20510

November 29, 1984

The President
The White House
Washington, D.C.

Dear Mr. President:

As sponsors of the National Archives and Records Administration Act, we are glad that you saw fit to approve the legislation.

You share our commitment to the selection of the best qualified candidate to lead the new National Archives. Such a candidate selection process should be carefully thought out in consultation with the professional membership and user-groups of the Archives. By early consultation with those most directly affected by the programs of the Archives, a consensus can be developed for the criteria for selection and for the ultimate nominee. We ask that you engage in such a process prior to submitting a nominee's name to the Senate Committee on Governmental Affairs.

With best wishes,

Sincerely,

Tom Eagleton
Thomas F. Eagleton
United States Senator

Charles McC. Mathias, Jr.
United States Senator

CM/mtm/ab

March 5, 1985

The Honorable Max L. Friedersdorf
Assistant to the President and
Legislative Strategy Coordinator
Office of the White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. Friedersdorf:

On November 29 of last year, Senator Eagleton and I wrote to the President urging an early consultation with the professional membership and user groups of the National Archives with respect to the selection of a nominee for Archivist of the U.S. pursuant to P.L. 98-497.

Although our letter was acknowledged on January 7, the principal constituency groups have not, as yet, been contacted by the White House either formally or informally.

As you may know, one of the principal motivating reasons for the reestablishment of an independent Archives and Records Administration was to assure nonpartisan professional decision-making with respect to the records of our government of permanent historic value. The user groups of the Archives who have given long and thoughtful consideration to this matter are a resource which remains untapped.

The current Archivist, Dr. Robert Warner, has announced his resignation effective April 1.

This reorganized agency deserves to get off on the right foot quickly with a permanent appointee

Would you look into the status of this matter and let me know what the intentions of the White House are?

Thank you for your attention to this matter.

With best wishes,

Sincerely,

Charles McC. Mathias, Jr.
United States Senator

WILLIAM V. ROTH, Jr., DELAWARE, CHAIRMAN

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CHARLES McC. MATHIAS, Jr., MARYLAND
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WILLIAM C. LEONARD
STAFF DIRECTOR

EILEEN C. MAYER
CHIEF COUNSEL

United States Senate

COMMITTEE ON
GOVERNMENTAL AFFAIRS

SUBCOMMITTEE ON
GOVERNMENTAL EFFICIENCY AND THE DISTRICT
OF COLUMBIA
WASHINGTON, DC 20510

December 3, 1985

Mr. M. B. Oglesby
Assistant to the President
for Legislative Affairs
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear ~~Mr. Oglesby~~ B:

It has come to my attention that the White House has made a Schedule C appointment to the National Archives and Records Administration.

I believe such an appointment is ill-timed and inappropriate in view of the fact that no nominee has been put forth for the position of Archivist of the United States.

As a principal sponsor of the National Archives and Records Administration Act, P.L. 98-497, I am concerned that this now-independent agency be headed and staffed by non-partisan professionals. The records of our government of permanent historical value and the access to them of future generations deserve nothing less.

On November 29 of 1984 I wrote to the President about this concern. Again on March 5, 1985 I reiterated this concern to Mr. Friedersdorf. On both occasions I urged that the principal user groups of the Archives be consulted by the White House in the selection of a nominee for Archivist.

Prudence as well as basic organizational and management practice dictate that the head of an agency select those key advisors who will administer the organization and report to him. Until such time as a permanent Archivist has been confirmed and appointed, I believe Schedule C appointments should be deferred.

With best wishes,

Sincerely,

Cm

Charles McC. Mathias, Jr.
United States Senator

THE WHITE HOUSE
WASHINGTON

Dear Senator:

The following is provided to reinforce the information we discussed in your office this afternoon.

My Associate Director Susan Phillips and I met with former Archives Director Robert Warner. In an hour-long discussion, Warner provided to us his insight on the responsibilities and challenges which would be faced by the Archivist. We discussed criteria for the selection of an archivist as well as specific candidates for the position.

Early in the selection process I personally called Librarian of Congress Daniel Boorstin to get his input. We discussed how he viewed the position and I encouraged him to get back to me if he had any suggestions for candidates.

As early as November 1984, my Associate Director George Armstrong, who was at that time assigned to the search, corresponded and met with Dr. Arthur S. Link, Editor of the Papers of Woodrow Wilson. Of the six names submitted to Mr. Armstrong as a result of his meeting with Dr. Link, all were looked at and four were brought to Washington, D.C. for White House interviews. One of these, Dr. William Alderson, removed himself from consideration shortly after his trip to Washington.

Susan Phillips spoke with Bruce Dearstyne of the National Association of Government Archives and Records Administrators on October 25, 1985. They discussed the abilities of certain candidates interviewed by the Office of Presidential Personnel who were known to Dearstyne.

Of the six candidates recommended by Liisa Fagerlund, Secretary to the Board of Directors of the National Association of State Archives and Records Administrators, three were interviewed.

Susan Phillips spoke on several occasions to Gerald George of the American Association for State and Local History. George also corresponded with our office concerning candidates. All three of the candidates he recommended were interviewed.

Andrew Heiskell, Chairman of the President's Committee on the Arts and Humanities and board member of the New York Public Library was contacted by Susan Phillips and corresponded with me.

Page Miller, Director of the National Coordinating Committee for the Promotion of History met with George Armstrong on March 22, 1985 and had numerous conversations thereafter with George and subsequently with Susan Phillips and her Deputy, Eric Vautour. Additionally, Dr. Miller corresponded with our office. Though she initially supported the candidates recommended by Dr. Link, her later candidates (Burke, Bellardo, Tise, and Wilson) were all interviewed and given serious consideration by the Office of Presidential Personnel.

Correspondence and/or telephone information was received from Norman Fiering, Director of the John Carter Brown Library; David Eisenhower; James Morris, Program Director of the Andrew Mellon Foundation; Lawrence Reger, Executive Director, American Association of Museums; Allan Ullberg, Associate General Counsel, the Smithsonian; Nicholas Burckel, Chair, Joint Committee on Historians and Archivists; and Joan Hoff-Wilson, Executive Secretary of the Organization of American Historians.

Thank you for the opportunity to meet with you. I appreciate your providing me the time to explain the review and selection process utilized by me and my staff during the selection of an Archivist.

Sincerely,

Bob Tuttle

Robert H. Tuttle
Director of Presidential Personnel

The Honorable Charles McM. Mathias
Committee on Governmental Affairs
340 Dirksen Senate Office Building
Washington, D.C. 20510

477

THE WHITE HOUSE
WASHINGTON

September 8, 1988

Dear Senator Roth:

It has come to my attention that a letter sent by my office concerning the President's nomination of Dr. John Agresto to be Archivist of the United States has been the basis of questions concerning the standards applied in his selection.

The letter in question is a standard response utilized for correspondence concerning candidates for Presidential appointments. Be assured that the Office of Presidential Personnel is fully aware of the statutory requirements and intent of Congress that the selection of Archivist be made without regard to political affiliation.

In selecting Dr. Agresto these standards were rigorously adhered to and his nomination is based solely on his professional and academic credentials.

Sincerely,

Bob Tuttle

Robert H. Tuttle
Director of Presidential Personnel

Honorable William V. Roth, Jr.
Chairman
Committee on Governmental Affairs
United States Senate
340 Dirksen Office Building
Washington, D.C. 20510

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United States Senate

COMMITTEE ON
GOVERNMENTAL AFFAIRS
SUBCOMMITTEE ON
OVERSIGHT OF GOVERNMENT MANAGEMENT
WASHINGTON, DC 20510

September 10, 1986

The Honorable William V. Roth, Jr.
Chairman
Committee on Governmental Affairs
U.S. Senate
Washington, D.C. 20510

Dear Chairman Roth:

Pursuant to Rule XXVI of the Standing Rules of the Senate, we request that Robert H. Tuttle, Director of Presidential Personnel, be called as a witness before this Committee to testify on the nomination of John Agresto to be Archivist of the United States.

Sincerely,

Tom Eagleton
Tom Eagleton

Carl Levin
Carl Levin

John Glenn
John Glenn

Albert Gore
Albert Gore

WILLIAM V. ROTH, JR., DELAWARE, CHAIRMAN

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United States Senate
COMMITTEE ON
GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510

September 17, 1986

The Honorable Thomas F. Eagleton
Ranking Minority Member
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Tom:

I hope that you will reconsider the request made by yourself and Senators Levin, Glenn, and Gore on September 10, 1986, to call Robert Tuttle, Director of Presidential Personnel, before the Committee to testify on the nomination of John Agresto to be Archivist of the United States. It is my belief that proceeding with that request at the current time would be unwise for the following reasons.

First, the Committee is not likely to succeed in bringing Mr. Tuttle before the Committee. There is no reason to expect Mr. Tuttle to testify voluntarily since, as a matter of policy and practice, White House staff do not testify before Congress. If the Committee were to consider issuing a subpoena, signficant questions relating to executive privilege would undoubtedly arise.

Second, Mr. Tuttle has already indicated to the Committee that Mr. Agresto's selection was made without regard to political affiliation. In a letter to the Committee dated September 8, 1986, Mr. Tuttle states:

> Be assured that the Office of Presidential Personnel is fully aware of the statutory requirements and intent of Congress that the selection of Archivist be made without regard to political affiliation. In selecting Dr. Agresto these standards were rigorously adhered to and his nomination is based solely on his professional and academic credentials.

Therefore, the Committee is already aware of what Mr. Tuttle would testify to if the Committee were successful in calling him.

Third, the best evidence that Mr. Agresto's nomination was not based upon political considerations is the fact that Mr. Agresto was chosen in spite of the fact that he answered negatively when asked whether he had contributed to or made speeches on behalf of the President.

Fourth, the statute does not require that the selection be made *without knowledge of* political affiliation, but that it be made *without regard to* political affiliation. It is not unreasonable to assume that White House staff will inform themselves about a potential Archivist's political involvement in order to assure that the candidate does not have significant political involvement. Otherwise, the White House could find itself in the position of having selected, without knowing it, a candidate who might have contributed heavily to the President's campaign. This Committee has asked questions of Mr. Agresto regarding political affiliation and contributions for informational purposes, but will make a decision regarding his nomination based upon his qualifications. It is not unreasonable to assume that the White House has done likewise.

Fifth, the critical question before the Committee at present is whether Mr. Agresto has the experience, qualifications, and integrity to serve in the position of Archivist. It is not necessary to hold a hearing on the White House selection process in order to complete the Committee's confirmation responsibility in this instance.

Finally, we can no longer afford to delay Committee action on this nomination, which we received on May 7. Because of a request for delay in scheduling a hearing and a later request to postpone the hearing, we are still considering this nomination with only days remaining in the 99th Congress. Therefore, it is my intention to include consideration of the nomination of Mr. Agresto on the Committee's mark-up to be held before the end of the session.

In summary, for all of these reasons, I believe that it is not wise at this time for the Committee to call Mr. Tuttle as a witness regarding the nomination of Mr. Agresto. After reconsidering the matter, I hope that you will agree with me.

Sincerely,

Bill

William V. Roth, Jr.
Chairman

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United States Senate

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September 19, 1986

The Honorable William V. Roth, Jr.
Chairman
Committee on Governmental Affairs
U.S. Senate
Washington, D.C. 20510

Dear Chairman Roth:

We continue in our request of September 10, 1986, that Robert H. Tuttle, Director of Presidential Personnel, be called as a witness to testify on his role in the nomination of John Agresto to be Archivist of the United States. It is clear that the statute governing the appointment of the Archivist prohibits such appointment based on political considerations. It is also clear from the record of the hearing so far that political inquiries were made by Mr. Tuttle of Mr. Agresto and of another candidate considered by the White House for this position. Mr. Tuttle should be available to the Committee for questions and answers on his conduct relative to this matter so we may determine the extent to which this proceeding has been tainted by unlawful political considerations.

While you correctly point out that the President may seek to invoke executive privilege in denying to Congress the availability of Mr. Tuttle for his personal testimony, such privilege resides solely with the President, and we should not prejudge his excersize of this authority. Moreover, it may be possible that the President waived his executive privilege in this matter when Mr. Tuttle personally responded by letter dated September 8, 1986, on this particular nomination process. It is also possible Mr. Tuttle may welcome the opportunity to testify.

Should the President invoke executive privilege, however, despite Mr. Tuttle's letter, we would want to take the opportunity to submit to Mr. Tuttle written questions on this subject for his written response to the Committee, and we would continue in our request to call other individuals considered by Mr. Tuttle for this appointment at another hearing.

With this request still unresolved, we hope you will not proceed to place Mr. Agresto on the Committee's next mark-up.

Sincerely,

Carl

Carl Levin

Al

Albert Gore

Tom

Tom Eagleton

John

John Glenn

TE:CL:ljg

WILLIAM V. ROTH, JR., DELAWARE, CHAIRMAN

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United States Senate
COMMITTEE ON
GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510

September 30, 1986

Mr. Robert H. Tuttle
Director of Presidential Personnel
The White House
Washington, D.C. 20500

Dear Mr. Tuttle:

As you know, the Committee currently is considering the nomination of John Agresto to be Archivist of the United States. During the course of the nomination hearing, questions were raised by certain Members of the Committee as to whether your office has complied with the statutory directive for appointment of the Archivist.

Specifically, the law provides that:

> The Archivist shall be appointed without regard to political affiliations and solely on the basis of the professional qualifications required to perform the duties and responsibilities of the office of Archivist.

The Committee would appreciate your responses to the following questions:

1. Please detail each question you asked Mr. Agresto, during your consideration of him for the position of Archivist, which relates to his political affiliations. Detail his response to each question.

2. What was your purpose in asking those questions of Mr. Agresto?

3. In a letter to the Committee dated September 8, 1986, you stated: "Be assured that the Office of Presidential Personnel is fully aware of the statutory requirements and intent of Congress that the selection of Archivist be made without regard to political affiliation. In selecting Dr. Agresto these standards were rigorously adhered to..." How does that statement

comport with your questionning Mr. Agresto regarding his political affiliations?

4. What was the basis for the decision to select Mr. Agresto for the position of Archivist?

5. Were the questions you asked Mr. Agresto regarding political affiliations different in any way from the questions you asked other candidates for the position of Archivist? Please detail any differences.

Thank you for your prompt attention to this matter.

Sincerely,

Bill Roth

William V. Roth, Jr.
Chairman

WVR/cf/cjw

THE WHITE HOUSE
WASHINGTON

October 1, 1986

Dear Mr. Chairman:

I have reviewed your letter of September 30, 1986, regarding the pending confirmation of Dr. John Agresto to be Archivist of the United States, and appreciate the opportunity to respond to your questions and concerns. Set forth below, to the best of my recollection, are my responses to the Committee's questions:

1. During my interview of Dr. Agresto, I asked him what his party affiliation was, whether he had made any political contributions, and whether he had engaged in any political activities.

Dr. Agresto responded that he was registered to vote as a Republican; that he had made small contributions to the Republican Party in recent years, but had not contributed to any Reagan Presidential Campaign; and that he had not campaigned for President Reagan in 1980 or 1984 and had not been involved in any political activity since college.

2. These same three categories of questions were asked of all the candidates for Archivist who were interviewed in order to ensure that the recommended candidate not have such significant political identification or active political involvement that his selection would be inappropriate under the terms of the statute. Unless we made the general inquiries which we did, we would not have had a basis to ensure that the selected candidate comported with the statutory requirements. For example, one candidate who was strongly supported by many Members of Congress had been so active in the 1980 Democrats for Reagan Campaign that his selection could have raised legitimate concerns about the statutory directive for appointment of the Archivist.

3. As indicated in my response to the previous question, making the kind of inquiries I did assisted in ensuring that the candidate was not an individual with a strong public political identification who had significant involvement in political activities. The candidate selected, Dr. Agresto, had neither campaigned for, nor contributed to, any Ronald Reagan campaign for the Presidency, and had not been involved in any partisan political activity for over twenty years.

4. I believe that of all the candidates whose credentials were reviewed (more than 24 individuals) and of those who were interviewed by me or my staff (12 individuals), and whose references were checked, Dr. Agresto's broad background and extensive professional experience most nearly fulfilled the criteria for the Archivist. These criteria were developed after careful review of the statute and in consultation with many user groups and with Dr. Warner, the immediate past Archivist.

5. The three categories of questions regarding political activity which I asked Dr. Agresto were asked of all the Archivist candidates I interviewed. In some cases I may have asked follow-up questions regarding these three areas in order to clarify answers and to ensure a complete response.

I trust these explanations of my efforts to adhere to the statutory standards for the appointment of the Archivist will assist the Committee in its confirmation process.

Sincerely,

Robert H. Tuttle
Director of Presidential Personnel

The Honorable William V. Roth, Jr.
Chairman, Committee on Governmental
  Affairs
United States Senate
Washington, D.C. 20510

#1

January 4, 1985

Mr. George W. Armstrong
Presidential Personnel
The White House
Washington D.C.

Dear Mr. Armstrong:

I greatly enjoyed our visit on the day after Thanksgiving, and I am very pleased that you asked me to help in the search for a new Archivist of the United States. Let me say, first of all, that I know that the President wants to make a distinguished appointment which will evoke the overwhelming approbation of the historical and archival communities. I have tried to find such persons who are also willing to be active candidates. The following list is the product of discreet and confidential advice from persons in the profession whose opinion I highly respect. Let me add, in the second place, that it has been very difficult to follow your request to rank the candidates. All of them are distinguished and outstanding persons. All of them have the qualities of leadership and wisdom which are so essential to the position, so I ranked them with some trepidation and in the knowledge that you will of course come to your own conclusions.

Let me just name the individuals and say a few words about them. I will not go into detail since this is all in their vitas.

You will note that I have not commented on the politics of any of the "candidates." All of the persons whom I recommended are nonpartisan in the best sense, that is, none of them, except one, has engaged in any significant political activity to my knowledge. I would gather from [redacted] lettter that he has strong [redacted] support. [redacted] tells me that he is a [redacted] of long standing and a member of the [redacted]. However, I must say that I share the deep conviction of most of my colleagues and of the Conference Committee on S.905 that this appointment should be made absolutely without regard to partisan affiliation, except of course that we do not want any far-out person from any extreme wing.

I enclose a statement by the representative of the AHA on the Joint Advisory Council of NARS. I am sure that you will find it very helpful.

Let me say again how glad I was to be of service to you. If I may say so, I think that I know the historical and archival profession in this country as well as any other person, and if I can be of further service to you, please do not hesitate to call upon me.

With warm regards, I remain,

Sincerely yours,

Arthur S. Link
President, American Historical
Association, 1984, and of the
Organization of American Historians.
George Henry Davis '86
Professor of American History and
Director and Editor of
The Papers of Woodrow Wilson

ASL/ihm

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Cy ltr

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Search

THE WHITE HOUSE
WASHINGTON

RECEIVED FEB - 5 1985

January 25, 1985

Dear Mr. Link:

Thank you very much for your letter in which you recommend candidates for a new Archivist or, as we call it now, a new Administrator of the National Archives and Records Service.

I will be happy to take those individuals' credentials and experience under consideration as we continue the process of filling this vacancy.

We greatly appreciate your referral of qualified persons to serve in the second Reagan Administration.

Sincerely,

George W. Armstrong

George W. Armstrong
Associate Director
Presidential Personnel

Mr. Arthur S. Link
Editor
The Papers of Woodrow Wilson
Firestone Library
Princeton University
Princeton, New Jersey 08544

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April 12, 1985

MTM

Senator Charles McC. Mathias, Jr.
United States Senate
Senate Office Building
Washington, D.C. 20510

Dear Senator Mathias:

Joan Hoff-Wilson has just sent me a copy of your letter to Mr. Friedersdorf of March 5.

I think that you should know that Mr. George W. Armstrong of the Office of Presidential Appointments invited me down to his office on the day after Thanksgiving. I was at that time President of the American Historical Association and of the Organization of American Historians, the presidency of which I will soon give up?* Mr. Armstrong asked me if I would canvass the leaders of the historical and archival professions and see whether I could come up with a list of distinguished persons whom members of both professions would regard with great satisfaction if any of them should be appointed as the new Archivist. I worked at least a week on this project, if not longer, and sent the list in, with vitas and my own commentary, to Mr. Armstrong in early January.

I have since called Mr. Armstrong several times. He always has been in conference and has never returned my calls. All of us are in a great quandary concerning the new Archivist, and I am not at all reassured by what I hear via the grapevine from time to time.

Sincerely yours,

Arthur S. Link

Arthur S. Link

ASL/ihm

graduate from!

April 24, 1985

Mr. Arthur S. Link
Firestome Library
Princeton University
Princeton, New Jersey 08544

Dear Mr. Link:

Thank you for keeping me informed of your activities with respect to the selection of a nominee for Achhttist of the United States.

I am pleased to know the White House solicited your views. You ase one of the few mmmbers of the user community of the National Archives who has been so fortunate.

As one of the principal sponsors of the Archives independence bill, my overriding concern has been that the position of Archivist of the U.S. be a professional rather than a political one.

Let's stay in touch on this issue of clear mutual concern.

With best wishes,

Sincerely,

Charles McC. Mathias, Jr.
United States Senator

THE WHITE HOUSE
WASHINGTON

RECEIVED NOV 25 1985

November 13, 1985 ✓

Dear Mr. Link:

I would like to thank you for your letter to the President of September 26, 1985 recommending [illegible] and [illegible] for the position of Archivist of the United States.

Please be assured that your comments will be carefully considered as we continue our endeavor to select the most qualified individuals to serve the President.

We greatly appreciate your recommendations of capable persons to serve President Reagan.

Sincerely,

George W. Armstrong
Associate Director
Presidential Personnel

Mr. Arthur S. Link
Firestone Library
Princeton University
Princeton, New Jersey 08544

NASARA

THE NATIONAL ASSOCIATION OF STATE ARCHIVES AND RECORDS ADMINISTRATORS

February 11, 1985

Mr. John S. Herrington
Assistant to the President
for Presidential Appointments
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. Herrington:

I am writing on behalf of the Board of Directors of the National Association of Government Archives and Records Administrators concerning the selection of the next Archivist of the United States. NAGARA, until recently the National Association of State Archives and Records Administrators, is concerned with efficiency in records administration and with the preservation of significant documentation at all levels of government.

The NAGARA Board regards the appointment of a capable new Archivist as a matter of greatest concern. While the Board does not seek to recommend specific individuals, it does believe that a person with the following strengths should be sought:

Experience in administering government records or a strong demonstrated commitment to their effective management and preservation.

The ability to work closely with state and local government records administrators on matters of common concern.

A reputation for excellence and leadership within the individual's profession.

Appropriate scholarly credentials.

Sufficient national stature to enable the individual to provide leadership to a wide range of constituent groups.

Experience in administering large organizations or institutions.

Familiarity with the Washington scene and the workings of the federal government.

Executive Secretariat · New York State Archives · Room 10A75 Cultural Education Center · Albany, NY 12230 · 518-473-8037

Mr. John S. Herrington
Page 2
February 12, 1985

NAGARA endorses the statement of the National Coordinating Committee for the Promotion of History on this issue. We also recommend the establishment of a screening committee to assist in the selection process. Should we be able to help you in any way, do not hesitate to contact Bruce Dearstyne, our Executive Secretary, or myself.

Sincerely,

Lewis J. Bellardo

Dr. Lewis J. Bellardo, President
NAGARA

NASARA

THE NATIONAL ASSOCIATION OF STATE ARCHIVES AND RECORDS ADMINISTRATOR

February 22, 1985

Mr. Edwin Meese III
Counsellor to the President
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Sir:

Subject: Selection of Archivist of the United States

The Board of Directors of the NATIONAL ASSOCIATION OF GOVERNMENT ARCHIVES AND RECORDS ADMINISTRATORS met in Washington, D.C. on February 18 and 19, 1985. The recent name change from State to Government represents our commitment to the effective administration of all government records. We are a nationwide organization and are vitally concerned in the selection of the next Archivist of the United States.

During the meeting the Board determined that since names of candidates are being considered by the White House, it would be important to indicate candidates that we felt met the qualifications for the position. The Board expressed its view on these qualifications in a letter to John S. Herrington, dated February 11, 1985; a copy of the qualifications are attached.

The names we advance for your consideration were selected by the Board of Directors, based on their proven leadership in public records programs. There may well be other names which are worthy of consideration.

Executive Secretariat · New York State Archives · Room 10A75, Cultural Education Center · Albany, NY 12230 · 518-473-803

We would be honored to be of assistance in providing information or assessment of these or other candidates in relation to the qualifications and strengths that are required for the position.

Sincerely,

M. Liisa Fag

M. Liisa Fagerlund, Secretary
Board of Directors

cc. Mr. Robert Tuttle
Assistant to the President for Presidential Personnel

NATIONAL COORDINATING COMMITTEE
FOR THE PROMOTION OF HISTORY

Administrative Offices 400 A STREET SE
WASHINGTON, DC 20003/(202) 544-2422

DR. PAGE PUTNAM MILLER
Director

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Society for Historians of the Early American Republic
Oral History Association
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March 28, 1985

1985 APR -2 PM 1:04

Mr. George Armstrong
Office of Presidential Personnel
The White House
1600 Pennsylvania Ave., NW
Washington, DC 20500

Dear Mr. Armstrong,

Thank you for meeting with me last Friday to discuss the selection of a new U. S. Archivist. I was most impressed with the careful attention that your office is giving to this matter and want to commend you personally for your work on this appointment.

On behalf of the thirty-five historical and archival organizations that compose the National Coordinating Committee for the Promotion of History, I am sending you biographical information on several individuals who would be capable of providing the kind of leadership that is so urgently needed at the National Archives. Several NCC member organizations have already contacted you with these and other suggestions. The following five people are those who are mentioned most frequently by the historical and archival community as having the attributes required for this position: [redacted] These five have the stature and presence required for this post. All are able administrators with a commitment to preserving government records. And most importantly each of these individuals fulfills the requirement specified by the Conference Report that the Archivist be "insulated from the political orientation of a particular administration."

The historical and archival community worked diligently for many years to restore independence to the National Archives. They take the words of Public Law 98-497, passed on October 19, 1984, very seriously. This act states that the "Archivist shall be appointed without regard to political affiliations and solely on the basis of the professional qualifications required to perform the duties and responsibilities of the office of Archivist." Also we strongly endorse the views of the Senate and House conferees who stated that "the office ought not to change hands automatically with the election of a new President." Only a qualified professional who is not tied to the ideological camp of either of the political parties can withstand the changes of administrations.

As you proceed with the selection process, if you should wish to consult further with me, I would be most happy to meet with you.

Sincerely,

Page Putnam Miller

Page Putnam Miller, PhD
Director

CC: Senate Governmental Affairs Committee

THE WHITE HOUSE
WASHINGTON

May 16, 1986

Dear Mr. Baker:

Thank you for your recent letter to President Reagan and for making known your concerns regarding the appointment of John Thomas Agresto.

Please be assured that we are doing everything possible to see that only the most highly qualified men and women who reflect and support the President's policies are appointed to positions of public trust in the Reagan Administration.

Your support for the President and his policies is very much appreciated.

Sincerely,

Bob Tuttle
Robert H. Tuttle
Director of Presidential Personnel

Mr. Richard A Baker
Box 14139 Benjamin Franklin Station
Washington, DC 20044

NAGARA

THE NATIONAL ASSOCIATION OF GOVERNMENT ARCHIVES AND RECORDS ADMINISTRATORS

May 13, 1986

Ms. Susan E. Phillips
Associate Director
Presidential Personnel
The White House
Washington, D.C.

Dear Ms. Phillips:

The Board of Directors of NAGARA requested that I write to you on our behalf in regard to the selection of the Archivist of the United States. On February 11, 1985, our Association sent a letter to John S. Herrington of the White House Personnel Office on the selection of the Archivist. In that letter we expressed several criteria that we believed the future archivist should possess.

It is our current understanding that Dr. John Agresto's nomination as Archivist of the United States is forthcoming. While Dr. Agresto meets a number of the criteria outlined in our letter of February 11, we do have concerns about his qualifications and experience regarding two of our criteria:

1. Experience in administering government records or a strong demonstrated commitment to their effective management and preservation.

2. The ability to work closely with state and local government records administrators on matters of common concern.

We look forward to the appointment of a qualified Archivist of the United States. The various important concerns about the nation's records badly need vigorous, informed leadership. Our Association looks forward to working with the Archivist of the United States to improve the often deplorable conditions facing many of the records of this nation.

Sincerely yours,

M. Liisa Fagerlund, Secretary
NAGARA Board of Directors

Executive Secretariat • New York State Archives • Room 10A75, Cultural Education Center • Albany, NY 12230 • 518-473-8037

IOWA STATE UNIVERSITY
AMES, IOWA 50011-1202

Department of History
603 Ross Hall

(515) 294-7266

29 September 1986

Senator Thomas Eagleton
United States Senate
Washington, DC 20510

Dear Tom:

I enclose a copy of my letter and questionnaire from the White House. It arrived several months after Arthur Link, as president of both the AHA and the OAH, had recommended me, along with several others, for the post of Archivist and sometime after a number of historians had written to Washington on my behalf. I actually had not written to the White House and had concluded from the fact that I had heard nothing from that locale that there was little interest there in the opinions of historians on the issue.

When I read the letter from Mr. Tuttle, I was shocked and angered by it. I regarded it as out of harmony with the legislation that Congress had passed and with the nonpartisan character of the position. I chose not to respond and so no longer looked upon myself as a candidate, and I heard nothing more from the White House.

Sincerely,

Dick

Richard S. Kirkendall
The Henry A. Wallace
Professor

THE WHITE HOUSE
WASHINGTON

RACCN#[illegible]
BATCH#[illegible]

Richard S Kirkendall
Iowa State University
Ames, IA 50011

May 9, 1985

Dear Richard:

On behalf of President Reagan, I would like to thank you for expressing an interest in joining the second term of the Reagan Administration.

In order that the Office of Presidential Personnel may begin processing your request for a position in the Administration, we ask that you complete and return this document in the enclosed envelope.

Thank you for your interest.

Yours truly,

Bob Tuttle
Robert H. Tuttle
Deputy Assistant to the President
for Presidential Personnel

HOME PHONE:____________ BUSINESS PHONE:____________

DATE OF BIRTH:____________ SOCIAL SECURITY NO:____________

1. VOTING ADDRESS (1984)________________________________

Voted: Yes___ No___ ZIP__________ COUNTY____________ PARTY__________

2. If you did not vote in 1984, please explain the circumstances.

3. Please indicate all 1984 campaign/candidate involvement (include the following):

Role/Position____________________

Supervisor/Contact________________ Telephone Number:______________

4. Please indicate other campaign or political activities you have been involved in over the past several years that you want us to know (please be specific and include contacts with telephone numbers).

5. Please indicate the Department/Agency you are interested in and your area of expertise:

____________________ ____________________
Department/Agency Expertise

(Attach an additional sheet if necessary)

THE WHITE HOUSE
WASHINGTON

David Bergen Gracy II
P O Box 12927 Capitol Station
Austin, TX 78711

RACCNR:212345
BATCH#:X094

March 29, 1985

Dear David:

On behalf of President Reagan, I would like to thank you for expressing an interest in joining the second term of the Reagan Administration.

In order that the Office of Presidential Personnel may begin processing your request for a position in the Administration, we ask that you complete and return this document in the enclosed envelope.

Thank you for your interest.

Yours truly,

Bob Tuttle

Robert H. Tuttle
Deputy Assistant to the President
for Presidential Personnel

HOME PHONE: 512-474-7784 BUSINESS PHONE: 512-475-2445

DATE OF BIRTH: Oct. 25, 1941 SOCIAL SECURITY NO: 455-66-5812

1. VOTING ADDRESS (1984) 2313 Tower Drive, Austin, Texas

   Voted: Yes X No ___ ZIP 78703 COUNTY Travis PARTY Democratic

2. If you did not vote in 1984, please explain the circumstances.

3. Please indicate all 1984 campaign/candidate involvement (include the following):

   Role/Position ---

   Supervisor/Contact --- Telephone Number: ---

4. Please indicate other campaign or political activities you have been involved in over the past several years that you want us to know (please be specific and include contacts with telephone numbers).

5. Please indicate the Department/Agency you are interested in and your area of expertise:

National Archives and Records Administration
Department/Agency

Archives, Records Management, Histo
Expertise

(Attach an additional sheet if necessary)

TEXAS STATE LIBRARY
LORENZO DE ZAVALA STATE ARCHIVES AND LIBRARY BUILDING
BOX 12927, AUSTIN, TEXAS 78711

Texas State Library
and Archives Commission

Dorman H. Winfrey
Director and Librarian

April 4, 1985

Mr. Robert H. Tuttle
Deputy Assistant to the President
Office of Presidential Personnel
The White House
Washington, D.C. 20500

Dear Mr. Tuttle:

I deeply appreciate this opportunity to confirm my interest in the position of Archivist of the United States by describing my political activity.

The archival profession in general, and government archivists in particular, recognize the obligation to be, and to appear to be, impartial and even-handed in caring for the records of government offices, government officials, and all parties, factions, and interests associated with government. Such impartiality insures to researchers and the general public alike that the records in archival custody accurately document government policy, procedures, and actions. Justice William J. Brennan, Jr., writing for the majority of the Supreme Court, after reviewing the 1974 Presidential Recordings and Materials Preservation Act, recognized the obligation in observing that government archivists have an "unblemished record" of discretion. I subscribe to the profession's principles. And to discharge my duties as State Archivist of Texas to the best of my ability, I have purposely avoided political activity.

For this position, I have been endorsed to the Vice President by [redacted]

AN EQUAL OPPORTUNITY EMPLOYER

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Administration	(512) 475-2166	(STS 822-2166)	Library Development Division	(512) 475-4110	(STS 822-4110)
Administrative Division	(512) 475-4140	(STS 822-4140)	Division for the Blind and Physically Handicapped	(512) 475-4758	(STS 822-4758)
Archives Division	(512) 475-2445	(STS 822-2445)	Records Management Division	(512) 454-2705	—
Information Services Division	(512) 475-2996	(STS 822-2996)			

Mr. Tuttle
April 4, 1985
Page 2

Delegate to the Republican National Convention in 1972. I believe that you have received a letter from the Vice President, after he conferred with [redacted] regarding my acceptability from the party standpoint.

My answer to your question concerning my voting in 1984 will suggest an affiliation with the Democratic Party nevertheless. The fact is, however, that it reflects not political activity but rather recognition that here many local races are settled in this primary.

I shall be pleased to provide any additional information you need.

Cordially,

David B. Gracy II
Director
Texas State Archives

[illegible]
CHARLES McC. MATHIAS, JR., MARYLAND
[illegible]
WARREN B. RUDMAN, NEW HAMPSHIRE
[illegible]
SAM NUNN, GEORGIA
JOHN GLENN, OHIO
CARL LEVIN, MICHIGAN
ALBERT GORE, JR., TENNESSEE
FRANKLIN G. POLK, CHIEF COUNSEL AND STAFF DIRECTOR
MARGARET P. CRENSHAW, MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON
GOVERNMENTAL AFFAIRS
SUBCOMMITTEE ON
GOVERNMENTAL EFFICIENCY AND THE DISTRICT OF COLUMBIA
WASHINGTON, DC 20510

WILLIAM F. LEONARD
STAFF DIRECTOR
[illegible]
CHIEF COUNSEL
SANDI MUSCHETTE, CHIEF CLERK

July 30, 1986

Dr. Louis Bellardo
Georgia Historical Society
501 Whitaker Street
Savannah, Georgia 31499

Dear Dr. Bellardo:

The Committee on Governmental Affairs will hold a hearing on the nomination of John Agresto for the position of Archivist of the United States on Wednesday, August 13 in room 342 of the Dirksen Senate Office Building beginning at 10 am.

As you are unable to attend this hearing as a witness, we ask that you respond in writing to the following questions concerning your experience with the White House Office of Personnel during their interview of you as a potential candidate for this position.

1. On approximately what dates and by whom were you interviewed by staff of the White House?

1. Mid October, 1985. Mr. George Armstrong, Assistant Director of Presidential Personnel; Susan Phillips, same title; Mr. Robert Tuttle, Director of Presidential Personnel.

2. Were you asked what your political party registration was?

2. Yes. I answered Democrat. Mr. Tuttle asked if I was appointed by the Democratic Governor of my state. I said that I was appointed on the basis of merit by a Commissioner who was appointed by the Governor. I was not, however, a Civil Service employee. He asked why I registered Democrat (I had two significant Republican references). I said that my position was not civil service protected and that it was my opinion that it was wise to register Democrat. Mr. Tuttle winced, and then asked if I had contributed to the campaigns of Republican candidates. I said that I had.

3. Were you asked whether you had ever campaigned for any candidates for public office and if so, were you asked their names and political party affiliation? NO.

4. Were you asked whether you had ever made any campaign contributions to any political candidate or party and, if so, were you asked the names of the candidates/party or amount of contribution? yes [illegible]

5. Were you asked what your response as Archivist would be to referrals by the White House of political appointees for positions at the National Archives?

5. Yes. I said that I had no problem with referrals provided the intent was to obtain appointments and not to influence the manner in which we documented the nation's history. I added that I did not believe that the administration intended the latter type of influence.

6. Were you asked about your views on Presidential libraries and the treatment of records of former Presidents? Were you asked anything about the Presidential materials of former President Nixon? Were you asked for your views on the proposed Reagan Presidential library?

6. Yes. I was asked what I saw as the role for Presidential Libraries and whether I would be agreeable to treating them as a community as well as a scholarly resource. I said I saw them as an outreach arm of the National Archives. They asked about my views on a common design for all future Libraries I said the idea was attractive and deserved study. I was not asked about the Reagan Library, nor about President Nixon's papers.

7. Were you asked about your philosophy of government or your views toward the federal career civil service?

7. Only in passing, and not on specific issues. I said had no basic conflicts with the admin.

8. If your answer to any of the preceding questions is affirmative, describe the line of questioning which was pursued in your interview; line of answers which you provided; and the response, if any by White House personnel, to those answers. n/a

9. Were you asked about your professional qualifications and experience to be Archivist? yes Were you asked if you were familiar with the laws governing the operations of the National Archives, specifically Title 44 of the U.S. Code, the Archives "independence" law, The Presidential Recordings and Materials Preservation Act, The Presidential Records Act of 1978, and The Presidential Libraries Act of 1986? no

10. Were you asked how you would approach administering The National Archives and Records Administration? Were you asked about your experience which might qualify you to administer a relatively large bureucracy and a $100 million annual budget?

10. Yes. I said I would try to involve the Archives more actively with federal agencies and the general public, and would emphasize automation efforts at NARA. I was told my lack of having administered a large federal bureaucracy was a cause of concern to them.

11. Were you asked if you were familiar with the operations of the National Archives and had used its facilities and programs?

11. No. They assumed I was informed and asked about how I would change things.

12. Was the independent agency status of the National Archives and Records Administration raised with you? If so, were you asked your views on the authority of the Archivist in relation to the President's with respect to archival decision-making? No

13. Were you asked about your familiarity with the more important court decisions affecting the National Archives? If so, were you asked your views of those decisions? No

14. Were you asked about your knowledge of the current problems facing the Archives and what you would do about them? No

15. Were you asked about your knowledge of the current budget of the National Archives and what future budgets you might propose? No

16. Were you asked about electronic information and the problems and solutions it poses for the National Archives?

16. Yes and we discussed the need for cooperation with federal agencies in developing modern information resource management systems in the federal government.

17. Were you asked about the backlog of records to be accessioned into the Archives and your ideas for reducing the backlog? No

18. Were you asked who or what groups supported you for the position of Archivist?

18. I was asked if my nomination would run into confirmation difficulties because of the attitudes of professional associations to me. I said no. I was also told that if I had a secret or illegal part of my life that might prove detrimental if exposed, I should withdraw. Such information would likely come out in confirmation investigations.

19. Did the White House ask you to come in for an interview or did you seek such an interview through other persons and means?

19. I was asked in October to come for an interview. In Febrarary I had requested consideration in a letter sent through my Congressman and through the office of the man who headed up the Reelect Reagan campaign. I did nothing further and heard nothing until October.

In summary, I was asked frankly political as well as professional questions. I was in general treated with courtesy. They subsequently checked up on me politically and I obviously did not pass their political tests. But I also may not have been sufficiently knowledgeable about Presidential Libraries to suit them. I also have never headed a federal agency, now any agency of over sixty-five people. These legitimate points could have counted against me. All in all, I don't think I was treated badly, even if I would have preferred that politics was of no consideration in the process. I hope these responses are helpful. Please let me know if I should supply additional information.

Sincerely,

Lewis J. Bellardo

Lewis J. Bellardo

Conservative Digest
July 1986

The Director of Presidential Personnel informs readers of CONSERVATIVE DIGEST that the criteria on which President Reagan selects his people are twofold: demonstrated competence for the position and proved commitment to his philosophy and to the Reagan agenda

They Might Want Your Resumé At The White House

BY ROBERT TUTTLE
DIRECTOR OF PRESIDENTIAL PERSONNEL

RONALD REAGAN'S vision for the staffing of the federal government made a profound impression on me as he answered a question at a 1979 campaign event. Asked about the kind of people he would select to serve in his Administration, he replied: "I want individuals who are willing to step down from the best jobs they have ever had in their lives to serve their country." Later, in 1982, when I was invited to join the Office of Presidential Personnel, I jumped at the chance.

The President's approach to personnel is the most systematic in the history of the modern Presidency. With his close friend and campaign advisor, Ed Meese, candidate Reagan had begun to identify the most strategic positions in the Administration as early as 1979. Today, as throughout his Presidency, Ronald Reagan personally reviews and approves every Presidential appointment.

The President's criteria are twofold: competence for the position (based on background, education, and expertise) and demonstrated commitment to his philosophy and the Administration's agenda. The effort and attention given to the process of recruiting, interviewing, and selecting final candidates has led to the appointment of thousands of conservatives to political positions at all levels of the federal government.

Personnel Policy. Ed Meese, Jeane Kirkpatrick, Bill Clark, Jim Watt, Don Hodel, Cap Weinberger, and Bill Bennett are frequently spotlighted, but conservatives also serve in important positions in this Administration that are less visible. Among the many outstanding appointees who can be cited are Mark Fowler as Chairman of the Federal Communications Commission; Jim Miller, currently Director of the Office of Management and Budget, formerly Chairman of the Federal Trade Commission; and, John Shad, Chairman of the Securities and Exchange Commission. All have overseen regulatory changes which will benefit the free-enterprise system for many years to come.

Conservative Jim Burnley, formerly Director of VISTA (Volunteers In Service To America), is now Deputy Secretary of Transportation, the Number Two position at that department. Danny Boggs, another strong conservative, served as Deputy Secretary of the Department of Energy before his appointment as a federal judge. Other notable judicial appointments to the Circuit Court of Appeals include Robert Bork, James Buckley, Antonin Scalia, Richard Posner, and Alex Kozinski.

A self-described "strict constructionist," Alex Kozinski is one of the organizers of the Nesher Group, a corps of prominent Washington-based Jewish conservatives. At 35 years of age, he is the youngest federal Appeals Court judge in the country and the youngest to have been appointed to that court in the 20th Century. Alex volunteered legal work for Reagan-Bush, '80 and worked on the Transition Team. His first job in the Administration was as Special Counsel to the Merit Systems Protection Board.

The Ambassadorial ranks have been filled with conservatives of the caliber of Lewis Tambs. A dedicated supporter of the President and Member of the Board of Governors of the right's distinguished Council on National Policy, Lew has served as Ambassador in two key posts, Colombia and (currently) Costa Rica. Ambassador Tambs, who earned his Ph.D. from the University of California and who speaks both Spanish and Portuguese, was from 1969 until tapped by the President in 1982 a professor of history and director of the Center for Latin American Studies at Arizona State University. From 1982 until 1983 he was a consultant to the National Security Council. A perfect example of the President's determination to appoint individuals who are both competent and committed, Lew Tambs has served with distinction.

Other Ambassadorial appointments that have brought cheers from conservatives include former Navy Secretary Bill Middendorf, who now serves as U.S. Representative to the European Economic Community and was U.S. Representative to the Organization of American States during the President's first term; Faith Ryan Whittlesey, whose two tours of duty as Ambassador to Switzerland were sandwiched around her appointment as Assistant to the President for Public Liaison; Evan Galbraith, former Ambassador to France; and, Jean Gerard, currently Ambassador to Luxembourg, who as Ambassador to UNESCO was instrumental in the U.S. withdrawal from that organization.

Road To The Right. The Reagan Administration is filled with people who came to their conservative philosophy by many different roads from all over the country. While I was getting my feet wet in Republican politics on the West Coast in the early Sixties, young and dedicated Republicans on the East Coast were planting the seeds for what is now referred to as the New Right or the Conservative Movement. Young Americans for Freedom (YAF), formed under the tutelage of Bill Buckley and Bill Rusher, was the training ground for many Reagan appointees; some of the original group of founding members hold key positions in the Administration. Carol Dawson, for example, was appointed a member of the Consumer Product Safety Commission in July 1984.

Also instrumental in the formation of YAF was Marvin Liebman, who has quietly made a career of getting young people involved in Republican politics. Marvin has served the President at ACTION, the Department of Education, and, currently, as Director of Special Projects at the National Endowment for the Arts. Two years after getting YAF off the ground with the young people who had been involved in the Goldwater for President and Judd for Vice President campaigns, Marvin organized the American Conservative Union.

In 1962, after being approached by some young conservatives on Wall Street, Marvin Liebman helped to organize the Conservative Party of New York. One of the founders of that group, Dan Mahoney, was recently sworn in as a Reagan-appointed U.S. Circuit Judge for the Second Circuit. Under Dan's leadership as its Chairman for more than twenty years, the Conservative Party of New York gained increasing influence both statewide and nationally and had a significant impact on the elections of President Reagan; Senator Alfonse D'Amato; U.S. Representative Jack Kemp; and, former Senator James Buckley, who was the first and only U.S. Senator to be elected as a member of the Conservative Party. Responding to the President's call for individuals of talent to join his Administration, Dan Mahoney gave up a lucrative law practice to become a judge.

Another Bill Buckley protégé is Daniel Oliver, recently confirmed by the United States Senate as Chairman of the Federal Trade Commission. A 1964 graduate of Harvard College who received his LL.B. from Fordham University Law School, Dan worked in Bill's campaign for mayor of New York City in 1965. He also ran for the New York Assembly that year, as well as the following year, and again in 1968. In 1970 he was director of research for James L. Buckley's New York Senatorial campaign. He continued his ties with the Buckley family when, in 1971, he joined the staff of *National Review*. From 1973 to 1976 he was executive editor, and he continues to serve as a director of the magazine. In addition, Oliver serves as a director of the American Conservative Union and is a trustee of the Philadelphia Society. After working on Jim Buckley's 1980 Senate campaign, Dan served on the President-elect's transition team for the Department of Education. Dan Oliver joined the Reagan Administration and served as General Counsel at both the Departments of Education and Agriculture before assuming his current responsibilities at the Federal Trade Commission in May.

Two other prominent Administration conservatives were in the early Seventies with the Intercollegiate Studies Institute (I.S.I.), which conducts Free Market programs on college campuses. Chuck Heatherly, the new Acting Administrator of the Small Business Administration (S.B.A.), served as I.S.I. Western Field Director from 1965 until 1973. Ken Cribb, Counselor to Attorney General Ed Meese, was I.S.I. National Director from 1971 until 1977, and is currently an I.S.I. trustee. Bob Reilly, Assistant to Ambassador Faith Whittlesey, and Heritage Foundation President Edwin Feulner, who was appointed Chairman of the U.S. Advisory Commission on Public Diplomacy by President Reagan, also came from the I.S.I. ranks.

Choosing The Future. Shortly after I joined the Personnel Office, *National Review's* Bill Rusher told me that one of the landmarks of the personnel operation of this Administration will have been the "credentialling" of young conservatives. This concept and the President's remarks at the early 1979 fundraiser are the fundamental precepts that guide me and my staff as we select members of the Administration.

Thousands of "Schedule C's," the political appointees who serve as Deputy Assistant Secretaries, Program Directors, Special Assistants, Administrative Assistants, and Confidential Assistants, have been gaining valuable government experience — "the credentials" for continued service in this and subsequent Administrations.

Heatherly and Cribb are good examples of this "credentialling." Chuck Heatherly, who had been editor of the Heritage Foundation's *Mandate For Leadership*, served as Executive Secretariat for the Department of Education and was later promoted to the position of Deputy Under Secretary for Management. Before assuming his current position at S.B.A., he was for two years the Director of the President's Commission on White House Fellowships. Cribb served on the 1980 Transition Committee and was an Assistant Director of the Office of Cabinet Affairs in the White House. He was subsequently promoted to Deputy Assistant to the President where he served until becoming Counselor to the Attorney General.

We are also "credentialling" a new generation of young political activists whose first major political campaigns were the 1980 and 1984 efforts for the Reagan-Bush team. A typical example is Michele Rossi, who interned with the Reagan-Bush Commitment '80 in Massachusetts while a Tufts University undergraduate. After graduation in June 1981, she came to Washington, D.C., as a Special Assistant at the Conservative Caucus Research, Analysis and Education Foundation. She has served in the Reagan Administration at the Institute of Museum Services, the White House, the Department of State, and is currently a Staff Assistant in the Office of the Attorney General.

Another example, Lisa Sanchez-Correa, Special Assistant to Diane Steed, Administrator of the National Highway Transportation Safety Administration, was a twenty-year-old volunteer in the 1980 Reagan for President campaign. In 1982 she was on the campaign staff for Pete Wilson in his successful run for the U.S. Senate from California and in 1984 was Deputy Western Regional Campaign Director for Reagan-Bush. Before joining the Administration in 1985, Lisa worked for the Nicaraguan Refugee Relief Fund which, with the help of President Reagan, raised money for the Nicaraguan Freedom Fighters.

By Many Paths. The conservative lobbies, educational groups, and political action committees which were established in the Seventies by Paul Weyrich, Howard Phillips, Terry Dolan, Judy and Paul Brown, Connie Marshner, and others were also training grounds and sources of key personnel for the Administration.

Joanne Gasper, a Deputy Assistant Secretary at the Department of Health and Human Services, was Editor of the Washington-based *Right Woman* and an active participant in Connie Marshner's Library Court coalition of pro-family organizations and activists before joining the President's team.

Susan Phillips, sister of Conservative Caucus chief Howard Phillips, first became active in politics when her brother ran for the U.S. House of Representatives from the Sixth District of Massachusetts in 1970. In 1976 she came to Washington, D.C., to work as an administrative assistant at Conservative Caucus. She joined the Reagan Administration in 1982 when Chuck Heatherly, then-Deputy Under Secretary for Management at the Department of Education, hired her to review that department's grant processes. After the project was completed she served as Director, Intergovernmental and Interagency Relations at the department. Susan was nominated by President Reagan to be the Director of the Institute of Museum Services in 1983, where she served until joining my staff in 1985.

There are some who came to their political idealism later in life. Jim Carey, who serves as a Commissioner and Vice Chairman of the Federal Maritime Commission, was raised in a Democratic home. As a matter of fact, his dad worked for the election of John F. Kennedy in the 1960 election. Jim's philosophy began moving rightward during his service as a naval line officer and surface warfare officer in the First and Seventh Fleets during the Vietnam conflict. Through his involvement with Navy Reserve organizations, he began to realize that the Republican Party was more in line with his pro-defense attitudes than the Democratic Party of his family.

While he participated in a minor way in the 1976 campaign, Jim Carey traces his political activism to the morning after the 1976 election when he woke up and discovered, much to his concern and amazement, that Jimmy Carter had actually been elected President, an event Carey had not believed could occur. Jim says he "signed on right then and there" as a conservative Republican activist.

Getting Together. When he assumed his current duties at the Maritime Commission, Jim Carey kept expecting that something would happen to bring him into contact with other Reagan appointees serving in other parts of government. From his private-sector experience where networking, trading information, and deal-making are important parts of one's daily existence, Jim knew that much more of the Reagan agenda could be accomplished if there were cooperation among the political appointees throughout government.

In true entrepreneurial fashion, Jim Carey filled the void. He is now the proud parent of the Executive Level IV Group, which provides a forum for the President's key appointees who serve in senior policy positions in the government; the Deputy Assistant Secretary Group, which does the same at a slightly lower level of responsibility; and, the Reagan Revolution Reunions which provide "Schedule C's" — the rank-and-file political appointees — an opportunity to meet those from the various departments and agencies who share their philosophy.

In addition, Jim has built the Conservative Network, a social group of political appointees, issue-group personnel, Capitol Hill staffers, and members of the private sector, which has grown from ten people to more than 1,500 in less than two years. The Network is now branching out with chapters in state capitals across the country.

The Administration is also providing opportunities for political appointees to get together. New Presidential nominees participate in briefings sponsored by the White House Offices of Presidential Personnel and Cabinet Affairs. Similar orientations are held for new Ambassadors, and Schedule C's are briefed on current issues by key White House staff, such as Pat Buchanan, Assistant to the President for Communications; Mitch Daniels, Assistant to the President for Political and Intergovernmental Affairs; and, Jack Svahn, long-time Reaganite and Assistant to the President for Policy Development.

Faithful Troops. There are many in the Administration who have supported Ronald Reagan since his early battles in California and who stood firmly by those same principles as the conservative agenda emerged in the early Sixties with the advent of Young Americans for Freedom, the Intercollegiate Studies Institute, the Goldwater for President campaign, and the growing dominance of young conservatives in Young Republicans and College Republican groups around the country. Edward H. McCabe, for example, who was issues director for the Goldwater campaign, now serves the President as Chairman of the Student Loan Marketing Association.

Many long-time conservative stalwarts, such as Joe and Holly Coors, serve on part-time boards and commissions. Angela "Bay" Buchanan Jackson, like a number of others, held a full-time Presidential appointment earlier in the Administration (Bay was Treasurer of the United States), and now serves as a part-time board member while having resumed her private-sector activities. Bay Buchanan Jackson is the sister of Pat Buchanan. This brother-sister conservative team, and the dynamic Joe and Holly Coors, are not the only examples of family involvement in the Reagan Administration.

Others include: Secretary of Energy John Herrington and his wife Lois, who is Assistant Attorney General, Office of Justice Programs; Presidential speechwriter Tony Dolan and his sister Maiselle Shortley, a Deputy Associate Director at ACTION; Mark and Nanette Everson, a husband and wife team at the Department of Justice; Office of Personnel Management Director Connie Horner and her husband Charles, Associate Director for Programs of the United States Information Agency: and, one of my Associate Directors, Kathie Regan Russo, active in the President's 1976 and 1980 campaigns, who recently married another Reagan loyalist, Paul Russo. Paul worked on the Governor's staff in California in the early Seventies and served in the President's first term both at the White House and the Department of Labor.

Breaking Through. The presence of Ronald Reagan and his cadre of supporters on the political scene for the past quarter of a century has gradually changed the face of American politics. That change is attributable to the personal charisma and historic leadership of Ronald Reagan himself. And, thanks to all that he has done, conservatism will continue to influence the face of American politics as the Special Assistants and Deputy Assistant Secretaries of today become the Commission Chairmen and Cabinet Secretaries of the future.

Political pundits predicted a high turnover of personnel in the second term; it was said that many appointees who had served for four years would want to get back to the private sector. This has not happened. Cabinet-level appointees in this Administration are staying longer — 35 months on average as compared to only 26 months in the previous three Administrations. There is an underlying current of sentiment that we serve the greatest President of this century and perhaps in the history of our nation.

No one here at the White House is missing the fact that a strong Presidency requires a strong support staff in political positions of all levels throughout the federal government. Through January 1989, the responsibility of Presidential Personnel is to continue to present to the President candidates for those positions which do become available who are solid in their commitment to the President's philosophy and dedicated to carrying out the Administration's agenda.

After all, personnel is policy.

Federation of Genealogical Societies
P.O. Box 220
Davenport, Iowa 52805

October 3, 1986

Senator Charles McC. Mathias
United States Senate
Committee on Governmental Affairs
Washington, DC 20510

Dear Senator Mathias:

The announcement in today's New York Times that your Committee has declined to act on the Agresto nomination for Archivist is most encouraging to those of us who testified against Mr. Agresto before your Committee.

We sincerely hope that the White House now understands that both law and sentiment oppose anyone who would be so obviously a political appointee and who lacks the professional qualifications for the high office of Archivist of the United States.

All of us who represent user groups of the National Archives plead with you to urge the White House to follow the wise procedure used heretofore in securing appropriate candidates for Archivist. This involves the formation of a blue ribbon panel composed of representatives of user groups and experts in data processing and archival management, along with experienced government executives, to solicit and screen applicants, and to provide the White House Personnel Office with the results of their deliberations.

Ray Kline, when he was Deputy Administrator of the General Services Administration, chaired the last Archivist Selection Committee and could provide further information on the process. He is now President of the National Academy of Public Administration with offices at 1120 G Street, NW, Suite 540, Washington, DC, 20005; telephone (202) 347-3190.

Hoping that you and other members of your Committee will expedite this, and with gratitude for your kind attention, I am

Most respectfully,

Malcolm H. Stern

Rabbi Malcolm H. Stern
Vice-President for External Affairs
300 East 71st Street #5R
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The Journal of Politics

The Supreme Court and Constitutional Democracy. By John Agresto. (Ithaca, NY: Cornell University Press, 1984. Pp. 182. $25.00 cloth, $7.95 paper.)

John Agresto, a political scientist currently serving as assistant chairman of the National Endowment for the Humanities, with this book submits his contribution to America's modestly booming industry of Supreme Court critiques and prescriptions. And no small contribution it is. To put it quite simply, this is an extraordinarily good book. It warrants reading by everyone who teaches about the Supreme Court, and, since Cornell Press had the wisdom to produce a paperback, it warrants assignment in upper-level courses on the judiciary and constitutional law. It is one of those rare books that grows richer on re-reading; it belongs on the shelf of every serious judicial scholar.

The book begin by attacking a variety of defenders of judicial review, that power of nine life-tenured individuals to override the will of democratically elected legislatures. Most powerfully it indicts the Pollyanna position of those scholars who assert that judicial review is compatible with our democracy because as an institution the Supreme Court tends systematically to protect the liberties of the few and to promote equality for the powerless. Agresto forces the reader to look at the less pleasant facts; from the post-Civil War period through the New Deal, we find the legislatures progressive, the judiciary reactionary. This finding was true concerning not only the well-known matter of economic legislation but also a depressingly long list of civil rights cases.

Having made the case that judicial review cannot be trusted to be simply a salutary force, Agresto then moves toward a discussion (which is completed in the book's final chapter) of the important contribution it can make to our political system. He does this by tracing the origins of judicial review, from the status of an appealing but novel idea in the 1600s to an established force in America by 1803. It gained its force because it fit so well into the American doctrine of constitutionalism. He argues that *Marbury v. Madison* laid the conceptual groundwork for judicial supremacy, or finality, a doctrine that caught on very quickly, and then he discusses the efforts by Thomas Jefferson and Abraham Lincoln to provide alternatives to that doctrine.

These early sections of the book are well written, fair-minded, and intelligent, but on the whole unremarkable. The book's essential and profound contribution lies in the last two chapters (five and six), and in the sections of chapter two on "constitutionalism," which provide the foundation for chapter six.

Chapter five takes up the following judicial power paradox: We accept judicial review because of our belief that government power ought to be checked by the written constitution and that governing authorities cannot be trusted to check themselves. Judicial review gives us the policemen to enforce the rules against the political branches. But if we accept judicial supremacy, we end up simply relocating unchecked government power into the judges' hands.

After reviewing, very thoughtfully analyzing, and then rejecting as inadequate each of the traditional checks on judicial power—constitutional amendment, judicial self-restraint, impeachment, restrictions on jurisdiction, and court-packing—Agresto returns to Lincoln's approach and offers a sustained and elaborate argument in its defense. This is the first of the central arguments of the book.

Arguing persuasively that our constitutional scheme is meant to be one of mutually interacting checks on government power, Agresto makes the case for a much more aggressive role by the president and Congress in the matter of constitutional interpretation. With the exception of constitutional amendment, each of the traditional checks on judicial power is much too blunt and unreliable to do the job that Agreto believes needs doing—to correct bad Supreme Court decisions, bad either as unsupportable interpretations of the constitutional text or as ill-advised policy or both. As for amending the Constitution, the process is so cumbersome as to be nearly impossible (13.1% of the state legislative houses is all that is needed to block an amendment), and it is a grossly inappropriate technique for rectifying the numerous and intricately specific errors of the Supreme Court.

What Agresto advocates is increased use by Congress and the president of their powers "to force the Court to reconsider and reverse . . . its prior decisions of unconstitutionality" (p. 93). He argues (with Lincoln) that particular decisions must, in deference to the rule of law, be treated as binding for those litigants, but that the politically accountable branches themselves "have a rational and proper interest in actively shaping constitutional meaning" (p. 93). In pursuit of this interest they may make slight revisions in legislation that has been declared unconstitutional, hoping by these to satisfy the Court's objections but to win on the substantive policy. Or they may pass statutes that limit the policy impact of particular constitutional interpretations. Both techniques are widely viewed as legitimate. But Agresto advocates a third, more generally viewed as questionable: Congress may simply repass the law declared void, forcing the Court to reexamine the issue. We all consider it legitimate for the Court to overrule itself. He suggests that this fact makes it legitimate for Congress to request such overruling by its actions. Agresto's proposal raises as many questions as it answers (e.g., Is a response designed for the egregious *Dred Scott* decision really appropriate for the day-to-day life of the Court?), but his discussion is much richer than this brief a summary can do justice to. It deserves wide reading and discussion.

Chapter six offers an equally rich set of arguments for the other side of the picture: why we cannot do without judicial review. Agresto explains judicial review as a commitment by our people to bind their own power by reasoned principles meant to be enduring. Principles, like children, grow with a life of their own, often evolving in unforeseen directions (p. 147). We need a living Court, removed from the political fray, not only to apply those principles to new issues but to articulate their very development over time. In this chapter Agresto makes an original and profoundly thoughtful contribution to judicial literature.

Leslie Goldstein, *University of Delaware*

Ethics Vol 96 #1

Agresto, John. *The Supreme Court and Constitutional Democracy.*
Ithaca, N.Y.: Cornell University Press, 1984. Pp. 182. $25.00 (cloth); $7.95 (paper).

This is a significant contribution to the debate about the Supreme Court's exercise of judicial review. The central thesis is that judicial review was intended to be limited by the framers and that it should be limited in a democratic society. The Constitution and practice have limited its exercise. However, the primary limitations are not the amending process, or the use of the Article III exceptions clause (which may permit limits on the Supreme Court's jurisdiction), or impeachment. The principal limitation in practice has been the ability of Congress to pass redrafted laws or laws based on other congressional powers, so as to assert its proper position as a coequal interpreter of the Constitution. The Supreme Court's tendency to permit such legislation to stand has been more important than other potential corrective devices. The importance of such an observation is heightened by the recent practice of the Supreme Court to be more than a simple veto on legislation passed by Congress but, instead, the source of significant substantive rights. Such an institution must be subject to potential checks in a democratic society.

A. S.

CHOICE
NOV '84
Political Science

AGRESTO, John. The Supreme Court and constitutional democracy. Cornell, 1984. 182p index 83-45928. 25.00 ISBN 0-8014-1623-X; 7.95 pa ISBN 0-8014-9277-7. CIP

Criticisms of US Supreme Court activism—of the Court's "enthusiastic efforts to codify the law instead of merely performing the judicial task of deciding the cases that come before it," as Associate Justice John Paul Stevens recently put it the Louisville, Kentucky *Courier-Journal* (5 August 1984, p. A18)—are almost as old as the Republic. Witness the reaction of the chief justice of the Virginia Court of Appeals, Spencer Roane (and other Jeffersonian Republicans), to US Chief Justice John Marshall's opinion in *Marbury* v. *Madison* (1803). In this important and significant book, the author (a political scientist) traces the historical development of judicial power in the US and urges that constitutional interpretation is not and was never intended to be solely within the province of the Supreme Court. The historical inquiry takes up one third of the book and is superbly done, though traditional. In the balance of the book, Agresto argues that the American political system is not properly a pyramid, with the Court at the top as ultimate authority, but one of balanced and checked government—"an interlocking system of mutual oversight, mutual checking, and combined interpretation," as the author puts it. An essential acquisition. Adequate index; good bibliography. For college collections.—*F. W. Neuber, Western Kentucky University*

The Supreme Court and Constitutional Democracy
John Agresto
Ithaca: Cornell University Press, 1984, pp. 182

This is a timely and important book for Canadian as well as American audiences. Agresto critically examines the role and scope of judicial review of civil liberties. He candidly admits that his concern with this issue is provoked by the dramatically new role assumed by the United States Supreme Court in recent decades, from its original function as an institution of "sober second thought" to that of "the agent of social change" (11). Agresto describes this evolution as the transition from judicial review to "judicial supremacy," a condition which he persuasively argues is undemocratic and thus unacceptable. While the focus of the book is on American constitutional politics, its subject is relevant to the constitutional changes affected by Canada's adoption of the Charter of Rights, especially the altered relationship between the Supreme Court of Canada and Parliament.

Unlike most conservative critics of the American Supreme Court, Agresto argues for an active exercise of the power of judicial review. He skillfully elaborates the connections between democracy, constitutionalism and judicial review. Constitutionalism is intended as a salutary check on the short-term excesses inherent in majority rule democracy, and judicial review is one way of enforcing constitutional limits and norms. More positively, a written constitution also embodies the fundamental principles of a polity, and judicial review is a preferred way of adapting and re-articulating the meaning of these principles over time. Agresto argues that calls for judicial self-restraint risk limiting the benefits as well as the potential disadvantages of judicial review, and thus are only half-right at best.

Having made the case for an active exercise of judicial review, Agresto must then deal with the problem of judicial supremacy, the ability of the American Supreme Court to override Congress actively and dictate major policy decisions. Agresto's solution is to resurrect the original and proper understanding of the theory of "checks and balances" advanced by the American founders. He uses the historical record to demonstrate that the Supreme Court was never intended to be solely responsible for constitutional interpretation. The Court was supposed to be "not a final arbiter" but only "a partner" with Congress, the president and the people in determining constitutional meaning (10).

In practice this means that Congress should be able to overturn, or at least disregard, what it considers to be mistaken judicial interpretations of the Constitution. Drawing heavily on Lincoln's response to the *Dredd Scott Case* of 1857, Agresto makes a crucial distinction between obedience to the Court's decision in a particular case—a necessary component of the rule of law—and allowing the Supreme Court to decide, once and forever, the larger question of constitutional doctrine. The latter amounts to judicial supremacy, not constitutional supremacy, and is unacceptable in a regime based on the principle of "government by the consent of the governed."

Agresto then reviews the various traditional methods available to Congress to check judicial errors in constitutional interpretation. Constitutional amendment is found to be both illogical and impractical. Impeachment, removal of jurisdiction, court packing, and court appointments are also found wanting, in large part because they attack the institution of the court, rather than "the truly burning issue of contemporary judicial politics, namely, the degree to which Congress can respond to particular decisions of the Court that Congress finds intolerable or unconstitutional" (134).

Having thus prepared the reader for some dramatic new mechanism whereby Congressional authority may be reasserted over constitutional interpretation, Agresto's prescription is anticlimactic. He first recommends that Congress force the Court to reconsider its decisions by re-enacting the same legislation in identical or appropriately amended form. Agresto's second "remedy" for judicial error is to "circumscribe the holding of any decision in an attempt to delimit its effects" (130). Neither of these responses has proved effective in the past, and Agresto's few examples are simply exceptions that confirm this more general fact. Sensing this problem, Agresto concedes that, "these few practical solutions may seem exceedingly modest and minimal" (133). He proposes as the ideal remedy a more direct form of legislative review of judicial review, analogous to Congress's ability to override a presidential veto. This "would have been the most unobjectionable method of combining the benefit of active judicial reasoning and scrutiny with final democratic oversight" (134).

The irony of Agresto's argument is that Canada now has—in Section 33 of the Charter of Rights—the mechanism which Agresto can only imagine. The much maligned "legislative override" power that the provinces successfully demanded as the price for their consent, is just such a form of "legislative review of judicial review." Agresto's argument should give Canadian readers pause to reconsider the torrents of abuse heaped on Section 33 following the November 5, 1981 accords. While the legislative override was the product of pragmatic political compromise, Agresto's argument suggests that it made the Charter a more democratic and more useful addition to Canada's political system.

F. L. MORTON *University of Calgary*

Law and History Review

Articles by
  Lawrence M. Friedman
  Ralph E. Giesey, Lanny Haldy
    & James Millhorn
  David M. Gold
  David J. Ibbetson
  Peter Lawson
  Walter F. Pratt, Jr.

Review Essays by
  Janet Senderowitz Loengard
  Wilfred J. Ritz

Book Reviews

Volume 4 **Spring 1986** **Number 1**

John Agresto, *The Supreme Court and Constitutional Democracy*. Ithaca: Cornell University Press, 1984. Pp. 192. $7.95 (ISBN:0-8014-9277-7).

Reviewed by Paul L. Murphy

John Agresto is a political scientist, trained at Cornell as a Strausian political theorist. He has served as Associate Chairman, and Acting Chairman of the National Endowment for the Humanities. His study of the Supreme Court begins with a series of assumptions about the excesses of judicial power, about the questionable uses of that power for liberal purposes, and about the Constitution itself, which he sees in a traditional mode, limited in its scope but vital in its intellectual authority. In this regard, he accepts the neo-conservative position that the document is not a 'living document', and that it has been wrongly applied and conceived for at least the last fifty years. 'Our job', as his mentor Walter Berns has written, 'is not to keep the Constitution in touch with the times, but rather to keep the times in touch with the Constitution'. To do that we must study the document, as a sort of straight jacket, a body of immutable, unchanging principles, and see to it that all our political behavior, and political programs, scrupulously comply with the ideas and principles of 1787. In contrast, those who see the Constitution as an instrument with which to deal with current burning issues and social problems have misunderstood its role, and Agresto has set out to explain much more precisely what he feels that role should be. To this extent, the study is heavily concerned with what judges should do when they decide constitutional cases and with the relationship of judicial review to our governmental structure of separation of powers and checks and balances.

This entails a fairly careful assessment of what the Supreme Court's role should not be. It should not be one of attempting to improve the lot of mankind because reforms seldom achieve anything and are not worth the struggle. History has demonstrated they accomplish very little. In this regard, the study is in the tradition of Alexander Bickel, Phillip Kurland, and Felix Frankfurter—thoughtful men who were convinced that the modern Supreme Court's moral idealism was thoroughly misguided.

The thesis of the book is relatively simple. Constitutional interpretation is not, and was never intended to be, solely within the province of the Supreme Court. The Constitution thus is not the Supreme Law of the Land enforceable simply by the judiciary, but a framework for limited government, with judicial review fitting within a system of mutual checks and balances. Constitutional government actually implies that the ultimate interpreter of our fundamental law is not an autonomous judiciary, but the interactive understanding of the people, their representatives and their judges together. The Supreme Court has thus drifted away from its moorings and original constitutional theory. This book is largely devoted to assessing the historical arguments over the validity of that course. We have, in Agresto's view, moved from a proper, limited vision of the Court's role to seeing it, according to neo-conservative sociologist Nathan Glazer, as a mighty and imperial judiciary.

Agresto traces the history of this development from Hamilton and the Founding Fathers through John Marshall, the Lincoln/Douglas debates and on into the twentieth century. His history leaves many things to be desired, not the least of which is any indication that the attitudes of the majority of the people at any point in time should play any role in determining the legitimacy of the Court's behavior, whether that be in validating or invalidating legislation, or in developing doctrinal postures to respond to changing social needs. More fundamentally, Agresto seems obsessed with a simple distinction that the judicial activism of the pre-1937 Court was legitimate since it was more of a negative activism solely checking unwarranted legislative actions; while the post-1930's activism has been of a totally different nature, and has constituted the Court assuming a policy making role, and a positive doctrinal developing posture with very little justification. Such a view of the Court's history is based more upon contention than factual reality and raises questions generally about the validity of the thesis being set forth.

Since at least the days of John Marshall, the Court has assumed policy making functions, and although there have been periodic movements from as early as the 1820's (which Agresto does not discuss) to check its abuse of power, general public acquiescence in the role of the Court as interpreter of the Constitution has been fairly consistent.

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When it has gone too far, public reaction has been vigorous, whether that be over *McCulloch v. Maryland*, Dred Scott, the Income Tax and anti-trust labor injunction, the I.C.C. emasculation cases of the 1890's, or in *Lochner v. New York*, when its carefully developed doctrine of substantive due process was used to stifle popular social experimentation at the state level.

In the period of its most conservative activism, however, in the late nineteenth and early twentieth century, with the Court acting primarily as the agent of a powerful minority (i.e., big business and economic power brokers, a group that had a great stake in the suppression of racial minorities, women, and unionists), there was a general acceptance of the Court substituting proper doctrinal reality for the misguided folly of the tyranny of a popular majority, even though in doing so the Court was scarcely playing a democratic role. As Wade McCree has written: 'it is quite certain that the anti-majoritarian Framers of the Constitution never contemplated that a business minority would invoke its protections'. In his recent excellent book, *The Politics of Judicial Interpretation: The Federal Courts, the Department of Justice and Civil Rights, 1866-1876*, Robert Kaczorowski includes a chapter entitled: 'The Supreme Court as Legislature: The Judicial Retreat from Civil Rights Enforcement', in which he argues that the Supreme Court rewrote all of the reconstruction civil rights statutes based upon its understanding of the theory and scope of federal authority, or really non-authority, to enforce civil rights. This is another example in which the Court did not negate laws as much as it totally reinterpreted the thrust of the measures Congress had passed. It is a role that apparently Agresto accepts, given his own unhistorical belief that the Court was merely behaving negatively toward bad legislation.

As to *Lochner*, public outrage over the decision at the time was massive, with President Theodore Roosevelt deploring the ruling as well as the general tendency of the Court to develop a 'neutral' area between the power of the state and the power of the federal government. The Court's role was not, Roosevelt said later, to make the Constitution a 'fetish for the protection of fossilized wrong'. 'We recognize in neither Court, nor Congress, nor President any divine right to override the will of the people.' Clearly Roosevelt and others saw the symbols of Court and Constitution as instruments of political warfare in conservative hands. Agresto argues that the Court is an unchecked power source and the other branches cannot balance that power when it is in an activist mood. The reaction to Lochner, however, brought popular demands for state legislative experimentation, unimpeded by 'the obstructive force of scholastic legalism'. The result was that when the Court adopted a 'rule of reason', regarding the legitimacy of legislative social experimentation, constitutional cooperation in the public interest was the beneficial and generally warmly accepted result. All of which is to say that the Court has shown that it can and will respond to popular pressure and also will cooperate with other branches in the constitutional area when its sense of public opinion and public needs is heightened. But Agresto does not accept this as its role. Rather, the Court should respond to doctrinally based policy, remote from immediate reality and popular whim. Its job constitutes engaging in a kind of legal scholasticism, derived from extrapolating meaning from the original principles of the Founding Fathers. Further, at no time does he acknowledge the simple fact that the ultimate force, even of the Supreme Court decisions themselves, is in the hands of those who do or do not enforce them.

Agresto's positive antidote is never specifically detailed. He wants the Court to reflect 'proper values'. He wants it to be a reasoning agency treating the Constitution as a principled document. He wants it interpreted historically by reference to the original intent behind any particular phrase or part of the Constitution. He wants the government to be one of shared power and shared rule, with no one branch making policy. He wants the Court's power to be checked by the other branches. Yet he distrusts the checks that are there. He rejects the amending process as a workable check; impeachment, appointment, consent strategies. He rejects Congressional control over the Court's appellate jurisdiction as an effective limitation. He wants all three branches to begin acting as if they were coordinating with one another. This would temper the unacceptable finality of judicial policy making.

But one suspects that under all of these fulminations, what Agresto really is upset by is not the Court's excessive activism, which does not really differ so greatly from the activism of the late 19th and early 20th century, but the fact that that activism and the doctrines which have been evolved through it has supported the wrong people in American society—blacks and other ethnic minorities, religious minorities, women, labor unionists, agitators, criminals, juveniles, aliens, and pro-choice advocates—people whom he generally sees as unworthy of constitutional largesse. He argues that the Court has never been a defender of such minorities and their fundamental liberties except in very limited ways, and goes on to suggest that when it assumes the role of their champion the historic pattern of its past behavior is being violated. Thus, because Blacks have always been second-class citizens, the Court should not do much for them other than to correct its own past decisions which unduly denied them abstract constitutional rights. Generally, however, if that is to be done, it is the role of the legislative branch, which will ultimately take care of such minorities. To this extent it is interesting to see him rejecting Jesse Chopper's recent book *Judicial Review and the National Political Process* partly on the ground that history has shown the majority will never deny the rights of the minority.

Clearly since the Founding Fathers did not see the Court as a guardian of liberty then it is not playing its traditional role properly in twentieth century America. But what that role is, precisely, vis-a-vis the other branches, is still elusive. To pinpoint it requires a better and a different kind of history than is here detailed.

DETROIT FREE PRESS - Thursday August 21, 1986

Education chief endorses mediocrity

By GARRY WILLS
Universal Press Syndicate

WILLIAM BENNETT, the secretary of education, professes a devotion to excellence and intellectual rigor, stressing what President Reagan has called "the new basics" — a phrase that suggests its user does not understand the meaning of "basics."

In fact, Bennett has been a sponsor or promoter of a network of mediocrities whose distinguishing feature is not scholarship or intellect but right-wing zealotry. The latest of this shabby crew is now being pushed by the White House to be archivist of the United States.

Wills

Those who do maintain high standards in archive research, history, library science and genealogical research (13 organizations in all) have overwhelmingly opposed John T. Agresto's nomination. He says he is being discriminated against because he is a political scientist by training, which is nonsense. He is being opposed because he is known not for his scholarship but for zealotry on some of the right-wing's favorite causes.

As chairman of the National Endowment for the Humanities (NEH), where Bennett had hired and promoted him, Agresto refused to obey federal rules for employing minorities and grandly said he would resign rather than comply — though he later capitulated under protest, grudgingly, with a minimum of observance.

THIS IS the man Bennett calls a "brilliant scholar," but Bennett's standards show up in the other people he has praised or promoted as part of his ideological network in government.

Item: Bennett sought out for the Education Department a woman, Eileen Gardner, who said that God had marked the handicapped, whose submission to Providence should make them not "selfishly drain resources" from the education of normal people. Bennett said of her that she was "in the respected traditions of theological thought."

Item: Bennett also hired at the Department of Education Lawrence A. Uzzell, who had lobbied to abolish the National Institute of Education because "radical left-wing feminists just love the NIE."

Item: The network in Bennett's department leaked a citizen's letter to a fellow government employe, who sent a response on government stationery saying: "When you die, you will give your accounts to Jesus Christ, your creator, who happens to be Christian." Those involved in this use of government funds to harry non-Christians cannot think their mentor would disapprove, since Bennett himself, as chairman of the NEH, used endowment funds to appear before Jerry Falwell's political organization at the San Francisco convention of 1984.

Item: As head of the NEH, Bennett stacked the Council of Humanities, which is supposed to be a panel of scholars, with activists from Falwell's Moral Majority and from the right-to-life movement, though they had no scholarly achievements to their name.

SOME THINK Bennett is trying to create a political organization of his own to run for elective office with a strong appeal to "social-issues" Republicans. That may be true, but I do not think Bennett is deliberately putting mediocrity into positions that should be filled by scholars of high standing. Considering the quality of his own thought in writing, his contribution to scholarship over the years, I think he is genuinely incapable of distinguishing excellence from mediocrity.

At any rate, his man from the NEH should not be put in the position of America's archivist, whose function is to work with a scholarly community that has no respect for him. That would be using federal money to attack the standards the office should exemplify.

Archives and politics

When 13 of the nation's major scholarly organizations whose members are involved with the keeping and study of historical records and documents complain that President Reagan's nominee as national archivist is unqualified, Congress should pay attention.

The nominee, John T. Agresto, is a political scientist and the deputy director of the National Endowment for the Humanities. His supporters have described him as "a man of moral seriousness who has thought long and deeply about the history of this country."

That is all well and good, but the position for which Agresto has been nominated requires some professional qualifications that he appears not to have.

There are also concerns that the keeper of the nation's historical record should be independent from political allegiances, to ensure that decisions on making government records public are not politically motivated. This is a matter that is certain to become an issue in the dispute over releasing former President Nixon's papers.

Agresto has tried to dismiss the criticism as "a silly turf fight that goes on between historians and political scientists."

Congress should heed Agresto's opponents in the American Historical Association, the Society of American Archivists, the American Library Association, the National Association of Government Archives and Records Administrators, and similar scholarly organizations.

Their view reflects that of Congress itself. Just two years ago, recognizing the importance of the office, Congress separated the National Archives from the General Services Administration – an agency that has traditionally been under political control – and said that the archivist should be chosen "without regard to political affiliations and solely on the basis of professional qualifications."

BOSTON
GLOBE

BG 8/21/86

OPINION

The Courier-Journal

Archives deserve professional, non-political chief

IF ANY NATIONAL institution has a right to be non-political, it's the U.S. Archives, the treasure chest of American documents.

That's the way it has been. In the past, those charged with preserving a billion or so papers that are the most fundamental tool for historians have been professionals, trained in the field, which is highly specialized.

Unfortunately, times have been changing for the Archives. When Congress removed it from the jurisdiction of the General Services Administration, the hope was that it would be even more independent. President Reagan was urged to appoint as director someone trained in the field — someone without political ties.

He hasn't. Instead, the President has nominated an administration partisan, John Agresto, currently deputy director of the National Endowment for the Humanities.

Mr. Agresto, trained in political science, isn't an archivist. Indeed, even the White House press office admits that his selection was based in part on the fact that he "reflects and supports the President's policies."

As *The New York Times* recently noted, the Archives may be in a sensitive spot soon as the debate over Richard Nixon's tapes intensifies. Congress has voted to open them to the public — but the former president's lawyers want to keep them off limits. Access to Reagan era documents may also be affected, since the archivist can influence the accessibility.

Ideology and political loyalty shouldn't even be considered in selecting an individual for this prestigious and unusually skilled task.

The NAACP, which is offended by Mr. Agresto's churlish attitude toward minority hiring at the humanities endowment, is against his confirmation. Professional historians and educators oppose the choice. So do we. The Senate should reject him.

Louisville - Aug 25 '86

August 21, 1986
Deseret News

In
our
opinion

The Mountain West's first newspaper
DESERET NEWS
Founded June 15, 1850 Salt Lake City, Utah

Keep the Archives independent

Two years ago, Congress struck a blow for political integrity by taking the National Archives away from the General Services Administration and making it independent.

But that independence can be undercut if the post as head of the Archives is treated as just another political plum to be filled on the basis of partisan favoritism rather than strictly on the basis of professional qualifications.

That's why the Senate ought to be in no hurry to confirm the nomination of John Agresto as the new archivist.

This nomination is being opposed by the National Association for the Advancement of Colored People and by the American Federation of Government Employees because Agresto has resisted affirmative action hiring. But that particular issue misses the main point. Just ask the professional archivists and the 12 other scholarly groups that also oppose Agresto's nomination.

Agresto, a Cornell Ph.D. in political science, is former acting chairman and now deputy chairman of the National Endowment for the Humanities. But it's hard to discern in his background the kind of professionalism and sheer grit needed to keep the National Archives open to all qualified researchers even when the information there would embarrass the administration in power.

As the federal agency that's keeper of America's legacy of important government documents, the National Archives should serve posterity rather than party. When the GSA was in charge, those objectives were subverted so badly that at one point the National Archives narrowly escaped being used to bury certain Nixon era records simply because they were politically embarrassing.

To avert such abuses, the National Archives should be headed by the most qualified, impartial archivist available. It's hard to believe that someone with more appropriate training and experience than Agresto's can't be found.

The New York Times

August 19, 1986

The Archives: No Place for Partisans

No closet has more political skeletons than the National Archives, custodian of a billion Federal documents. To assure the fullest access, Congress two years ago made the Archives independent, liberating it from the General Services Administration. The hope was that the President would stiffen that independence by appointing a qualified, impartial archivist. It appears to be a vain hope.

The Reagan nominee is John Agresto, formerly acting chairman and now deputy chairman of the National Endowment for the Humanities. According to the White House, he is qualified and also "reflects and supports the President's policies." But according to Congress, the archivist should be chosen "without regard to political affiliations and solely on the basis of professional qualifications." Those are very different standards for an official subject to dismissal only if the President explains why to Congress.

Professional archivists oppose the confirmation of Mr. Agresto, a Cornell Ph.D. in political science. So do 12 scholarly groups, plus the N.A.A.C.P. and American Federation of Government Employees. At the Endowment, Mr. Agresto resisted affirmative action hiring. At recent hearings, he insisted that he would be an impartial steward if confirmed, and carry out hiring policies he disagrees with.

This might be dismissed as a squabble over turf, as Mr. Agresto contends, but for the larger question. Is he a nominee who can be trusted to defend the right of access against his own political patrons? His would be a potent voice in deciding which papers are public property. He would be thrust into the legal argument over access to Richard Nixon's secret tapes, which Congress has voted to open and Mr. Nixon's lawyers are laboring to close.

This job is not just another political plum. The archivist should serve not party but posterity — a distinction the Senate can make plain by rejecting an undistinguished nominee.

THE NEW REPUBLIC
FOUNDED 1914
A Weekly Journal of Opinion
ISSUE 3,742
WASHINGTON, D.C.
OCTOBER 6, 1986

□ NOISE IN THE ARCHIVES: President Reagan has nominated John Agresto for archivist of the United States. The nomination is being opposed by some on the far right, and, with discord among the Republicans, some Democrats have sensed an opportunity to inflict a small political defeat on the administration. They say they object to the nominee's views on affirmative action and racial quotas. But Agresto's views are shared by just about every one of Reagan's appointments. This distinguished appointment shouldn't be held up because of them. Agresto is a young scholar-teacher-administrator who, first at the National Humanities Center in North Carolina and now at the National Endowment for the Humanities, has established a reputation for personal fairness and intellectual rigor. On the testimony of many liberal academics, he is not doctrinaire. There is no evidence that his politics have affected his judgments of the scholarship of others. The position of national archivist—caretaker of the physical Constitution—requires just such scrupulousness. The job also requires what Agresto seems to have in abundance: administrative imagination and fortitude. The archivist supervises the inchoate network of presidential libraries, making him or her the guardian of historical egos. This is not a position that should be fought over on political grounds. On any other grounds, Agresto's confirmation would be assured.

The Washington Times

WEDNESDAY, AUGUST 20, 1986 / PAGE 9A

Pedagogical perfidy

Example number *n* of the left-wing tilt of America's university professoriate: the suffering of John T. Agresto, President Reagan's nominee for archivist of the United States. Such once-reputable academic bodies as the Organization of American Historians, the American Historical Association, the Society of American Archivists, and the American Library Association have formed a cabal to scuttle this nomination. Dr. Agresto calls it "a silly turf fight," and at one level that's what it is — something pedagogical hairsplitters can sort out this fall between sipping sherry and discussing Immanuel Kant's catatonic imperative.

But at another level the complaints are transparently political. First, it is alleged that Dr. Agresto is a poor scholar — this of a man who has earned a Ph.D. from Cornell, taught at Kenyon College, Duke University, and the University of Toronto, authored *The Supreme Court and Constitutional Democracy*, edited two other published books, and written countless scholarly articles.

Well, then, say the detractors, he's just an egghead who would find the government bureaucracy beyond his control. But in fact he has served superbly as deputy chairman of the National Endowment for the Humanities, essentially a bureaucratic post.

Well, then, say the critics, shifting the debate once more, he opposes civil rights. On the contrary, he supports civil rights, but opposes such neo-racist schemes as affirmative action and racial balance "quotas." Dr. Agresto's critics imply that he's racist because — well, because he opposes racism.

The requirements established by Congress stipulate that the archivist should be chosen "without regard to political affiliations and solely on the basis of professional qualifications." Dr. Agresto meets the qualification test easily enough, and the Senate, which must confirm him, should give his detractors all the respect they deserve, which is precious little.

SPRINGFIELD NEWS-SUN

SPRINGFIELD, OH
DAILY 44,000

THURSDAY
SEP 4 1986
Burrelle's

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Nominee opposed for wrong reason

It lacks the drama of the nominations of William Rehnquist, Daniel Manion and others, but it is another example of a growing problem in Congress. John T. Agresto's nomination by President Reagan to be archivist of the United States, certainly not a pivotal post in Washington, is running into trouble among Senate Democrats, mostly for the wrong reasons.

Attacks on nominees being made for political and ideoligical reasons

Agresto is a political scientist so there is some opposition to him from historians and librarians. But the opposition in the main is political and ideological. He is, of course, a conservative. By all accounts Agresto has done a good job as deputy director of the National Endowment for the Humanities. He ~~committed one major sin, however, against~~ liberal tenets. He refused to supply racial and sexual goals and timetables for his agency, contending the endowment's affirmative action record was exemplary and that he was opposed to quotas on hiring and promotions.

Those issues, rather than his qualifications, will be before the Senate Governmental Affairs Committee next month. The job is to be filled on the basis of qualifications, not political bent. The naked ideological attacks on Reagan nominees have been more embarrassing to some senators than they have been harmful to the nominees.

BOSTON HERALD

BOSTON, MA
SATURDAY 277,026

SEP 13 1986
Burrelle's

265

Archives, anyone?

EDITORIAL

YOU have probably never heard of Dr. John Agresto. You probably never will. But move over Rehnquist and Scalia. Make way for the next big confirmation fight.

President Reagan has appointed Agresto to fill the exalted post of Archivist of the United States (quick, name the last archivist). That is, he will run the National Archives in Washington, which stores most of our important national documents.

At first glance, he is an intelligent and decent enough chap. He has a PhD. from Cornell, has taught at many major universities and published extensively on American history and politics. By Reaganite standards, he has performed superbly in his current post of acting administrator of the National Endowment for the [redacted]).

But that just isn't good enough for the Senate powers-that-be. They are upset because Agresto readily agreed to cuts in the NEH budget, the leading welfare program for the nation's intellectuals.

Some are even dragging out Watergate, charging Agresto couldn't be trusted with custody of the Nixon tapes. In spite of all the hullabaloo, we predict he will ultimately be confirmed as archivist, and the Republic will survive.

Wall Street Journal
9/26/86

Watergate Reruns

The Reagan administration's nomination of John Agresto to head the National Archives is bottled up in a Senate committee. The reason is clear: His critics are trying to make sure that when he takes office, they can start disinterring the whole scandal of Watergate.

Mr. Agresto, a political scientist, was brought to Washington by Education Secretary William Bennett and is now deputy chairman of the National Endowment for the Humanities. When he was nominated, the established historians' and archivists' associations mobilized against him. They said that he was unqualified and that because he was a Reagan appointee, he would politicize the Archives. One recognized scholar came forward to testify on Mr. Agresto's behalf and was subjected to vilification and abuse by Sen. Thomas Eagleton.

But the real subject here is Richard Nixon. When Mr. Nixon resigned over Watergate, the Archives acquired a huge collection of the administration papers, films and tapes. Congress then passed a law providing for the quick release of the documents.

The issue has been in litigation ever since. Last year the Archives proposed that the archivist have the power to rule if the former president wants to keep some papers closed on grounds of executive privilege.

The Justice Department gave an opinion on these proposed regulations, reminding everyone that the archivist is a member of the executive branch, so that final decisions on these matters lie with the president. The department also said the archivist should honor claims of executive privilege by a former president, since the Supreme Court has said that former presidents retain the prerogative.

Mr. Agresto, caught between the administration and the Congress that must confirm him, has split the difference. He says he will obey his sitting president but not routinely honor claims by a former president, meaning, of course, Richard Nixon.

Some administration conservatives say that if Mr. Agresto won't defer to the opinion of the attorney general, and won't hang tough on the Nixon papers, there is not much point in making the push to get him through Congress.

Mr. Agresto is stuck. The Democrats want an archivist prepared to be ever on guard against executive-privilege claims. They want the Watergate issue to churn endlessly.

They are close to damaging this country's ability to function properly. If there is one sure thing about politics and government, it is that people say different things in public and in private. If you make it quick and easy to release private written communications, they are not private any more. Written communications will surely become rigid and bureaucratic. Memos won't offer anybody's best advice. Congressmen should think harder about whether they want to further this calcification as a result of their desire to feed an appetite for political retribution.

As for those concerned historians who want all the documents quickly in order to write "contemporary history," as they oxymoronically put it, here is a piece of news: History is increasingly not present in the documents. As the written documents become more public, more real business is transacted orally. The papers become emptier and emptier of real clues to human motivation, because decisions are made in a way that is increasingly inaccessible to the scholars. The "concerned historians" are helping see to it that large pieces of our past are lost forever.

ARCHIVISTS CREDENTIALS AND STANDARDS

Biographical Information on Archivists of the United States

ROBERT D.W. CONNOR

First Archivist of the United States (1934-1941)

EDUCATION: Ph. B., University of North Carolina, 1899 (history); graduate study in history at Columbia University, 1920-21.

EXPERIENCE AND PROFESSIONAL ACTIVITIES PRIOR TO APPOINTMENT:

Engaged in public school education and administration in North Carolina 1900-1903; Secretary of the State Education Commission 1904-7; first full-time Secretary of the North Carolina Historical Commission, where he was responsible for the creation of the State Department of Archives and History 1907-20. Kenan Professor of History and Government, University of North Carolina 1921-1934. Appointed Archivist by the President of the United States at the urging of the American Historical Association and other professional historical organizations, 1934.

Active member of the American Historical Association, the Organization of American Historians, and the Society of American Archivists (served as President 1941-43). After returning to North Carolina as Craige Professor of History and Jurisprudence, served as chairman of the North Carolina Historical Commission until his death in 1950.

PUBLICATIONS (Seceted List):

Cornelius Harnett: An Essay in North Carolina History, Raleigh, Edwards and Broughton, 1909.

Makers of North Carolina History, Lewis and Co., Chicago, 1911.

North Carolina: Rebuilding an Ancient Commonwealth, Raleigh, 1929.

Ante-bellum Builders of North Carolina, Greensborough, N.C. College for Women, 1930.

"Archives: At Last They Have a Home," Sphere, March 1935

"Plans for the National Archives," Ohio Archaeological and Historical Quarterly, July 1935.

"The National Archives: Objectives and Practices," Bulletin of the American Library Association, August 1936.

"The National Archives," Americana Annual, 1938.

"The Necessity for Cooperation Between National and State Archival Agencies," Illinois Library, December 1938.

"The National Archives of the United States," Military Engineer, Jan.-Feb. 1939.

"The National Archives and Pennsylvania History," Pennsylvania History, April 1940.

"The Franklin D. Roosevelt Library," American Archivist, April 1940.

"Josiah Tucker; or Cassandra Picks the Pocket of Mars," World Affairs, June 1940.

"Adventures of an Amateur Archivist," American Archivist, January 1943.

"Dedication of the Archival Section of the Alabama World War Memorial Building," American Archivist, April 1941.

"FDR Visits the National Archives," American Archivist, October 1949.

SOLON JUSTUS BUCK

Second Archivist of the United States (1941-1948)

EDUCATION: A.B. Wisconsin, 1904; A.M. 1905; Ph. D. in American History Harvard, 1911, LL.D. Minnesota, 1954.

EXPERIENCE AND PROFESSIONAL ACTIVITIES PRIOR TO APPOINTMENT:

Taught history at University of Indiana 1908-9; Illinois, 1910-14; Minnesota, 1914-31; Pittsburgh, 1931-35; served as Director of the Western Pennsylvania Historical [Documents] Survey 1931-35; appointed Director of Research and Publications and Secretary of the National Historical Publications Commission when the National Archives was established; with the strong support of historical organizations, American Council of Learned Societies, prominent historians, and the Society of American Archivists (which he served as President 1945-47), named Archivist of the United States by the President in 1941.

PUBLICATIONS:

The Granger Movement, Cambridge, Harvard University Press, 1913.

Travel and Description 1765-1865, Springfield, Ill., 1914.

Illinois in 1818, Springfield, 1917.

The Agrarian Crusade, New Haven, Yale University Press, 1920.

Stories of Early Minnesota, New York, 1925.

Planting of Civilization in Western Pennsylvania, Pittsburgh, University of Pennsylvania Press, 1939.

"Frontier Economy in Southwestern Pennsylvania," Agricultural History, Jan. 1936.

"The National Archives and the Advancement of Science," Science, April 24, 1936.

"The Status of Historical Bibliography in the United States," Transactions, International Federation for Documentation, 1938.

"Das Nationalarchiv der Vereinigten Staaten von Nordamerika," Archivalische Zeitschrift, 1939.

"Selected References on Phases of Archival Economy," Staff Information Circular no.6, Washington, National Archives, 1939.

"Essentials in Training for Work with Public Archives and Historical Manuscript Collections," American Library Association, Archives and Libraries, 1940.

"Let's Look at the Record," American Archivist, April 1945.

"The Archivist's One World, American Archivist, January 1947.

WAYNE C. GROVER

Third Archivist of the United States (1948-1965)

EDUCATION: A.B. Utah, 1927; A.M. American, 1937; Ph. D. in Public Administration from American, 1946; LL.D. Brown, 1956; Bucknell, 1960.

EXPERIENCE AND PROFESSIONAL ACTIVITIES PRIOR TO APPOINTMENT:

Served as journalist and Congressional aide before joining National Archives in 1935; served in increasingly responsible positions at the Archives 1935-41; Research and Analysis Branch of OSS (records management) 1941-42; Adjutant General's Office, War Department (became "the Army's leading records management officer") 1943-47; Assistant Archivist 1947-48; named Archivist of the United States by the President in 1948.

Active member of historical organizations and the Society of American Archivists (served as President in 1953-54).

PUBLICATIONS (selection):

"War Department Records in the National Archives," Journal of the American Military History Foundation, Fall 1937.

"Research Facilities and Materials at the National Archives" American Political Science Review, Oct. 1940.

"Relevancy and Adequacy of Unprinted Source Material for Research," American Archivist, 1942.

"A Note on the Development of Records Centers in the United States," Indian Archives, 1950.

"Recent Developments in Federal Archival Activities," American Archivist, Jan. 1951.

"The National Archives at Age 20," American Archivist, April 1954.

"Archives, Society and Profession," American Archivist, January 1955.

"Government Records for Research" in Responsible Freedom in the Americas, Ed. by Angel Del Rio, Garden City, Doubleday and Co., 1955.

"Federal Government Archives," Library Trends, January 1957.

"The Role of the Archivist in the Preservation of Scientific Records," Isis, March 1962.

"Toward Equal Opportunities for Scholarship," Journal of American History, March 1966.

ROBERT H. BAHMER

Fourth Archivist of the United States (1965-1968)

EDUCATION: A.B. North Dakota State, 1928; A.M. Colorado, 1929; Ph. D. in American History Minnesota, 1941.

EXPERIENCE AND PROFESSIONAL ACTIVITIES PRIOR TO APPOINTMENT:.

Instructor in junior college for two years before serving as Administrative Assistant to Congressman Frank Hook 1934-36; joined the National Archives staff in 1936 and served in various archival positions until 1942; served as archivist and records manager in the Navy Department during 1942 and in the War Department 1943-48; in 1948 returned to the National Archives as Assistant Archivist; appointed Deputy Archvist in 1956; after twenty-two years of service in the Archives and seven years as a military records manager during World War II, appointed Archivist of the United States in 1965.

An active member of the American Historical Association and the Society of American Archivists (served as President in 1962-63); the last leader of the agency from the original "depression" generation of founders.

PUBLICATIONS:

"The American Society of Equity," Agricultural History, Jan. 1940.
"Scheduling the Disposition of Records," American Archivist, July 1943.
"Tenth Annual Meeting of the Society of American Archivists," American Archivist, Jan. 1947.
"Keep the Record Straight," Ohio Archaeological and Historical Quarterly, July 1954.
"The National Archives After 20 Years," American Archivist, July 1955.
"The Case of the Clark Papers," American Archivist, 1956.
"The Third International Congress of Archivists," American Archivist, April 1957.
"Legislative Background of Presidential Libraries," Presidential Libraries: Their Growth and Development, Washington, Interagency Records Administration Conference, 1958.
"The Archival Function in the States," American Archivist, Jan. 1959.
"Recent American Developments in Archival Repair, Preservation and Photography," Papers from the IV International Congress on Archives, Stockholm, 1960
"The Management of Archival Institutions," American Archivist, Jan. 1963.
"Archives," in Encyclopedia of Library and Information Science, 1968.

JAMES B. RHOADS

Fifth Archivist of the United States (1968-1979)

EDUCATION: A.B. California (Berkeley) 1950; M.A. 1952;
Ph.D. in American History American U. 1965

EXPERIENCE AND PROFESSIONSL ACTIVITIES PRIOR TO APPOINTMENT:

Joined the National Archives in 1952; served in the Motion Picture Branch, Cartographic Records Division, Exhibits and Publications Branch, Foreign Affairs Branch, Diplomatic, Legal and Fiscal Branch, and Presidential Libraries; named Assistant Archivist for Civil Archives in 1965; Deputy Archivist in 1966; after sixteen years of service appointed Archivist of the United States in 1968.

Active member of professional organizations including the American Historical Association, Organization of American Historians, and the American Association for State and Local History; served as President of the Society of American Archivists in 1974-5, and President of the International Council on Archives in 1976-79.

PUBLICATIONS:

"The Fort Snelling Area in 1835: A Contemporary Map," Minnesota History, March 1956.

"Civil War Maps and Mapping," Military Engineer, Jan-Feb. 1957.

"Copyright in the United States: An Overview of Its Effects on American Archivists," Indian Archives, Jan. 1967-Dec. 1968.

"What is Past is Prologue," Prologue, Spring 1969.

"The Role of the National Archives in Facilitating Statistical Inquiry," Computer Studies in the Humanities and Verbal Behavior, March 1969.

"The Historian and the New Technology," American Archivist, July 1969.

"Programs of the National Archives," Illinois Libraries, February 1970.

"An Archivist of Intellect and Industry" American Archivist, April 1970.

"The Future of Hard Copy," Records Management Journal, Spring, 1970.

"Genealogists and the National Archives: Profile of a Partnership," National Genealogical Society Quarterly, June 1971.

"The Role of Archives in the 1970s," Library Lectures, Louisiana State University, 1972.

"The Taming of the West: Military Archives as a Source for the Social History of the Trans-Mississippi Region to 1900," People of the Plains and Mountains: Essays in the History of the West Dedicated to Everett Dick, 1973.

"Secrecy and the Right to Know," *Classification Management*, 1973.

"The National Archives and Revolutionary War Materials," *Richmond County [Georgia] History*, Summer 1974.

"Central or Local Control: The Case for an Archival Partnership," *Georgia Archive*, Winter 1974.

"Who Should Own the Documents of Public Officials?" *Prologue*, Spring 1975,

"One Man's Hopes for His Society, His Profession, His Country," *American Archivist*, January 1976.

"The Role of the National Archives," *Pattern and Process: Research in Historical Geography*, 1975.

"Why Is Records Management Important?" *ARMA Records Management Quarterly*, Jan. 1976.

"The Papers of the Presidents," *Proceedings of the Massachusetts Historical Society*, 1977.

"The Importance of Family History to Our Society, *The Public Historian*, Spring 1979.

"Remarks at the Governor's Pre-White House Conference, Libraries and Information Services, Lexington, Kentucky, March 19, 1979," *Kentucky Library Association Bulletin*, Fall 1979.

"The North Carolina State Archives," *Public History in North Carolina, 1903-1978,* 1979.

ROBERT M. WARNER

Sixth Archivist of the United Stater (1980-1985)

EDUCATION: Muskingum College, B.A. 1949 (History); University of Michigan, M.A., 1953; Ph.D., 1958 (History) L.H.D. Westminister, 1981; LL.D. Muskingum, 1981; L.H.D., DePaul, 1983.

EXPERIENCE AND PROFESSIONAL ACTIVITIES PRIOR TO APPOINTMENT

Served in U.S. Army 1950-52; with the Michigan Historical Collection from 1953, rising to Director of the Bentley Historical Library 1966-80; held faculty appointments at the University of Michigan from 1961; appointed Professor of History in 1971 and Professor of Library Science in 1974.

Active member of Organization of American Historians, American Association for State and Local History, American Library Association, the American Historical Association (Council Member 1982-84), Society of American Archivists (President 1976-77), Historical Society of Michigan (President 1973-79). Served on Board of Visitors of the Maxwell School of Citizenship and Public Affairs, Syracuse University from 1982; Board of Visitors, School of Library Science, Case Western Reserve University, 1976-1984, (Chairman for two years); appointed Archivist of the United States by the Administrator of GSA after a committee of distinguished citizens and federal administrators conducted a nation-wide search to fill the poition.

PUBLICATIONS:

Michigan Civil War History, An Annotated Bibliography, (George S. May, ed.) Detroit: Wayne State University Press, 1961.

Guide to Manuscripts in the Michigan Historical Collections of The University of Michigan. (with Ida C. Brown). Ann Arbor, MI 1963.

Profile of a Profession: A History of the Michigan State Dental Association. Detroit: Wayne State University Press, 1964.

The Modern Manuscript Library. (with Ruth Bordin), New York: Scarecrow Press, 1966.

College and University Archives in the United States and Canada (chief compiler), Ann Arbor, MI 1966.

Economic and Historical Report on Northern Michigan from Early Times to 1850. Report to the Indian Claims Commission. David A. Horr, Editor. New York: Garland Publishing Inc., 1973.

Historical Report on the Sault Ste. Marie Area. (with Lois J. Groesbeck). Report to the Indian Claims Commission.

David A. Horr, Editor. New York: Garland Publishing Inc., 1973.

A Michigan Reader 1865 to the Present. (with C. Warren Vanderhill), William B. Eerdmans Publishing Co., Grand Rapids, MI 1974.

Pictorial History of Ann Arbor 1824-1974 (with others), Ann Arbor, MI: Sesquicentennial Commission 1974.

Sources for the Study of Migration and Ethnicity (with Francis X. Blouin), Michigan Historical Collections, Bentley Historical Library, Ann Arbor, MI 1979.

"The Death of Zebulon Pike," The Colorado Magazine, July 1955.

"A Document of Michigan Pioneer Life," Michigan History, June 1956.

"Detroit's First Supreme Court Justice," Bulletin, Detroit Historical Society, May 1957.

"Miss Newcomb and the Talking Machine," The Ohio Historical Quarterly, April 1958.

"Chase S. Osborn and the Presidential Campaign of 1912," The Mississippi Valley Historical Review, June 1959.

"Journal of a Fifty Niner," The Colorado Magazine, July 1959.

"Chase S. Osborn's 1910 Primary Election Campaign," Michigan History, September 1959.

"Chase Salmon Osborn, 1860-1949, Michigan Historical Collection Bulletin 10, Ann Arbor, MI 1960.

"The Stuggle for Regulation," The Journal of the Michigan State Dental Association, February 1961.

"Early Dentistry in Michigan," The Journal of Michigan State Dental Association, September 1959, Michigan History, March 1962.

The Michigan Historical Collections of The University of Michigan, Michigan Historical Collections Bulletin 13, Ann Arbor, MI 1964.

"The Role of the Secular Institution in Collecting Church Records," The American Archivist, April 1965.

"Detroit's First Dentists," Detroit Historical Society Bulletin, November 1966.

"The French in Michigan," Total Information, Autumn 1967.

"The Status of College and University Archives," The American Archivist, July 1968.

"The Drowning of Douglass Houghton," Inland Seas, Summer 1970.

"American Archivists and Their Society: A Composite View," (with Frank Evans), The American Archivist,April 1971.

"A Census Probe into Nineteenth Century Family History: Southern Michigan, 1850-1880," (with Susan E. Bloomberg, Mary Frank Fox, Sam Bass Warner, Jr.), Journal of Social History, Fall 1971.

"Archival Training in the United States and Canada," The American Archivist, July/October 1972.

History of the Michigan Historical Collections, Michigan Historical Collections Bulletin 22, Ann Arbor, MI 1974.

"Sources for Michigan Library History," *Michigan Librarian*, Fall 1976.

"An Adrian Diarist Looks at the Presidential Election of 1876," (edited), *Chronicle*, Vol.12, No. 3, Fall 1976.

"History of the First Prebyterian Church," (Co-editor), Published by the First Prebyterian Church, Ann Arbor, MI 1976.

"The Prologue is Past," *The American Archivist*, January 1978.

The Anatomy of a Speech: Lyndon B. Johnson's Great Society Address, Michigan Historical Collections Bulletin Ann Arbor, MI 1978.

"The National Archives and Records Service: The Path Ahead," *Prologue*, Fall 1980.

"Archives and the New Information Ear," *Education for Information Management, Directions for the Future*, International Academy, Santa Barbara, CA 1983.

"Prologue in Perspective: The Generation of '76," *Prologue* Fall 1984.

"Prologue in Perspective: The Law and American Society," *Prologue* Winter 1984.

"Prologue in Perspective: Archives and the International Scence," *Prologue* Spring 1985.

"The National Archives at Fifty," *The Midwest Archivist*,November 1985.

"Significance and Implications of an Indpendent National Archives," *The ALA Yearbook of Library and Information Services*, Chicago, 1985.

Letter from Dr. Robert M. Warner,
Archivist of the U.S. 1980-85

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August 1, 1986

Charles Mc. Mathias, Jr.
United States Senator
United States Senate
Committee on Governmental Affairs
Washington, D.C. 20510

Dear Senator Mathias:

I was pleased to hear from you again, and I am glad to respond to your questions. I feel that the National Archives is of great importance to the people of this country. It preserves a good portion of the historical heritage of all Americans and as such deserves the full respect of all branches of government. The appointment of Archivist of the United States is an honor and a responsibility. The person who is chosen becomes the keeper of the key documents of American history. As a former Archivist I want to call your attention to the varied responsibilities of the position, the critical needs of the National Archives, and the qualifications that the next Archivist must have.

There are many responsibilities of the Archivist of the United States some of which I need not catalog, but a few of them are critical. The Congress itself provided perhaps the best statement of responsibility of the Archivist. In discussing the Archivist's position in the new law making the Archives an independent agency, the conference report stated that the Archivist should be a person "performing professional archival and records management functions, insulated from the political orientation of a particular administration. Because of the non-political nature of the Archivists duties the office ought not to change hands with the election of a new president." The law clearly specified that the appointment should be made by the President "without regard to political affiliation and solely on the basis of professional qualifications." This fact is of the greatest importance in this particular appointment, since it will be the first since the National Archives became an independent agency. If the appointment is perceived as being based on political considerations, there will be great disappointment and dissatisfaction in the archival/historical community and the intent of the law to name an Archivist who will transcend changes in administrations will be frustrated. The Archivist of the United States has a responsibility and a positive obligation to both be and be seen as being nonpartisan.

A second key responsibility is to provide leadership to Archivists and to all who depend on and use the Archives. The person should have high professional standing to assure that he will be well received by the various groups and constituencies with whom the Archivist must work -- the Executive Branch, the Congress, and the various professional organizations comprising the archival, historical and genealogical communities. The person should be able to give leadership in order to bring the diverse constituencies into a strong supporting relationship for the programs of the National Archives. His integrity and respect must inspire trust.

Any new Archivist will have to work with the sensitive constituencies reflected in the Presidential library system. The first that he will have to deal with will be the Ronald Reagan library. The person must be able to relate to the various concerned groups at Stanford University, the administration and faculty of Stanford, and the staff of the Hoover Institution.

Since the Archivist is often the final voice in many technical matters relating to archival questions (including being the ultimate authority on the disposition of all federal records), he should have an awareness of the various ramifications of his decisions, be able to defend them in a sophisticated and intelligent manner to the Congress, to other government agencies and to professional groups. Many of these decisions are controversial to one or more of these groups. He must be able to defend his position and bring enough stature and authority to the office that the Archival decisions will be accepted and favorably received by the Executive Branch, the Congress, or the media.

Another important responsibility of the Archivist is the international archival community. International archival meetings are held annually. In dealing with heads of other National Archives at these affairs, it is essential that the Archivist bring stature to this important task and represent with authority, knowledge, and skill the professional American archival community and the National Archives of the United States.

Administrative talents are of course important for anyone heading a large agency, but that almost goes without saying. The Archives has a hundred million dollar budget, over three thousand employees, and facilities in seventeen different states. While I found in the Archives a staff of capable administrators to whom much could be delegated, I quickly learned that they turned to me for basic guidance. A thorough understanding of the fundamental mission of the Archives is simply essential for policy administration.

Several pressing problems confront the National Archives; let me mention a few. Certainly the first priority is to get the National Archives and Records Administration off to a very strong and effective beginning as an independent agency of the government and to ensure that is has the respect of all branches of government and all the professional constituencies. This goal we have already alluded to, but its importance cannot be overstressed. This first appointment will be precedent setting, and it should be made on professional merits, inspiring confidence that whoever holds the position will be guided by professional, not political concerns. The first Archivist named to lead the newly independent agency should possess the highest professional status possible.

Second in importance, I think, is the challenge for the Archives to become a leader in the new environments in which archives and government information are being created. The National Archives must be the leader in this area. The various state archives and other archival agencies look to the National Archives to provide the research , the vision, the imagination and the commitment to master the various kinds of information that are being created by new technology, and to make the best decisions and plans for the preservation of this information in new formats. Problems created by the electronically generated records, which are growing with incredible speed, are enormous and wise decisions based on good research in an intellectual professional environment are essential. The question is so basic, in fact, that if it is not addressed wisely by the National Archives much of the future history of this nation will be forever lost. Whereas the preservation of the paper documentation has already been well addressed by the Archives and needs only consistent and sustained leadership to bring about an effective solution to this problem, the new electronic record requires an entirely different approach demanding considerable imagination and leadership. If the current revolution in record-keeping is not properly managed by the National Archives, disaster lies ahead for history.

A third major priority of the National Archives and Records Administration must be to acquire new space. The Archivist will have to take the lead in this responsibility and should have great familiarity with major archival research facilities. The Archivist must provide the necessary leadership among both political parties in the Congress and with the present and subsequent administrations to see that the necessary funding and a long-term building program is achieved. Space is a pressing need in the National Archives and there simply will have to be a major addition in the next decade or the Archives will fall woefully behind its counterparts in other countries of the world.

Finally, I will comment on the qualifications for the position of Archivist of the United States. Perhaps the most useful contribution I can make is to remind the Senate of the considerations that were behind the language that was written into the archives independence legislation, specifying a professional, nonpartisan Archivist of the United States. The debate centered around whether there should be a fixed term for the Archivist or whether the appointment should be for unlimited duration. In the background was a fear that absent a fixed term, each succeeding administration would choose an Archivist of its political persuasion to the detriment of a balanced policy on access to records and continuity of administration. The compromise was that no fixed term would be stated, but professionalism and continuity would be assured by writing into the law the requirements that the Archivist be a nonpartisan professional who can be removed only if the President informs each house of Congress of the reason for the removal. This compromise was fundamental to the passage of the legislation, and the appointment of the next Archivist is therefore the final stage in the independence process. I urge the committee to remember that the National Archives is an agency of high responsibility and great sensitivity. It is the impartial keeper of the nation's memory. It needs to be seen as completely fair and politically neutral in administering the records of the nation, and it must provide the leadership to move the institution into the new world of electronically created machine-readable government information and record keeping which we are entering.

Sincerely,

Bob Warner

Robert M. Warner
Dean

RMW:ck

Letter from Dr. James B. Rhoads,
Archivist of the U.S. 1968-79

July 31, 1986

Honorable Charles McC. Mathias, Jr.
United States Senate
Washington, D.C. 20510

Dear Senator Mathias:

Thank you for your letter of July 23, informing me of the forthcoming hearings on the nomination of Dr. John Agresto as Archivist of the United States, and requesting my views on future directions for the National Archives and Records Administration (NARA).

First of all, allow me to comment on the personal and professional qualifications that seem to me necessary for successful performance as Archivist of the United States.

Probably the most important qualification for the Archivist is the ability to command the personal and professional respect of the staff of NARA, other archivists and records managers, and an increasingly diverse clientele, both public and governmental. To command this respect, the Archivist must be familiar with professional concepts, procedures, concerns, issues, and ethics, as evidenced in published writings and public presentations. The Archivist should also have had administrative and managerial experience of some complexity and should be familiar with the operation of government, preferably on the Federal level. Personal experience in using archives or historical manuscripts for research purposes would give the Archivist insight into the guiding principles of archives administration and empathy for the problems and requirements of researchers. As the guardian of a great national treasure, the Archivist must be a person of integrity and strong character.

If the newly independent NARA is to develop consistent and stable programs, continuity of leadership is important. Thus, the first Archivist under the new dispensation should be someone likely to be retained in office by the next administration, regardless of party. That this was clearly the intent of the Congress is evident both from the legislative history of the independence act and explicit statutory language.

Continuity of professional, non-partisan leadership is important to the long-term effectiveness of NARA. It is important to the President of the United States, as well. If the Archivist were to be selected on grounds other than professional ones, a new and dangerous precedent could be introduced, involving the replacement of the Archivist with each change in administration. This would not augur well for the even-handed, non-partisan administration of the papers of former Presidents within the Presidential Library system.

If partisan, rather than professional, considerations should prevail in the selection of the Archivist, the objectivity of his stewardship over the nation's documentary heritage might well be called into question. The objectivity of the Archivist is especially critical with respect to his decisions on accessibility of Federal archives, the safeguarding and declassification of national security information, and retention or disposal of Federal records. The Archivist is clearly in a position to influence, for good or ill, the nation's understanding of its own history, by determining which records are to be preserved in the National Archives, and which are to be consigned to the pulp mill.

The Archivist must not only have good intentions with respect to these matters---he must also know what he is doing.

I should like to turn now to a discussion of some of the unique opportunities that face NARA as a newly independent agency. Foremost among them is the opportunity---the urgent necessity---to build bridges in many directions.

First of all, bridges must be built between NARA and Capitol Hill. Relationships must be developed with members of the Senate and the House of Representatives, and with Congressional staff members, so that the problems, needs, objectives, and motivations of NARA will be clearly and sympathetically understood in this most important of governmental forums.

Bridges must also be constructed between NARA and the Office of Management and Budget---and elsewhere within the Executive Office of the President---to ensure top-level Executive Branch support with respect to facilities, programs, and resources that are appropriate to NARA's mission.

Much effort should be invested in developing and improving relationships between NARA and other Federal agencies. It is important, both to the government and the public, that

Federal information and documentation is created, safeguarded, organized, and preserved in ways that will enhance the usefulness and usability of the archives of the future, and ensure the prompt disposal or retirement of records lacking current administrative utility.

Relationships must be strengthened between NARA and an increasingly diverse and complex universe of clients and constituency groups. NARA serves informational and research needs of all three branches of the Federal establishment, state and local governments, many disciplines within academia, lawyers, journalists, other writers, producers of documentary media presentations, genealogists, and other segments of the general public. It is essential that NARA understand the needs and concerns of all of these groups. They, in turn, should be made aware of the rich informational resources in our Federal archival system, and must understand the programs and objectives of NARA as well as any constraints under which it may operate.

Finally, bridges should be built to the archival and records management professions. These groups now look increasingly to an independent NARA for leadership in both professional and technical areas. Opportunities for NARA leadership include new initiatives in research and development, and dissemination of results to the professions, in eduaation and training, and in development of standards and other normative materials. In short, NARA has an opportunity to provide national leadership in cooperative efforts to preserve the documentary heritage throughout the United States and to enhance its accessibility and usefulness.

In conclusion, I should like to briefly examine five areas of concern that directly affect the ability of NARA to fulfill its basic mission. It seems to me that all of these deserve the priority attention and personal involvement of the next Archivist of the United States.

Perhaps the most basic problem confronting NARA---as well as archives, manuscript repositories, and libraries all over the world---is the gradual but inexorable deterioration of its holdings. The success of efforts to meet this problem through appropriate means of conservation and preservation is an acid test of effective stewardship. Much progress has been made in this area during the past several years, but comprehensive efforts must be continued on a large scale over many years to come. This will require steadfast leadership, a large budgetary commitment during a time of resource shortages, and careful monitoring of technological developments.

Closely related is the urgent need for additional space for archival storage and program activities in the Washington area. The National Archives Building reached its full capacity at least a quarter of a century ago. A new annex, in which now scattered activities can be consolidated, and which will meet the highest standards for secure, environmentally controlled storage for archives, is a necessity that the nation can ill afford to defer.

A third area of basic concern involves seizing the opportunities, and solving the problems, presented by the computer revolution. Continued efforts are needed to improve the efficiency of NARA's administration and its internal program operations through increasing use of automation. Even more important is the need to master the myriad of problems arising from the growing volume of Federal information that is now created, stored, and manipulated in computer-accessible media. To summarize, NARA must make major and continuing efforts to keep abreast of changes in information technology.

A fourth critical area has to do with the recruitment, selection, and development of the staff. NARA can be the richest of informational repositories and still fall short of fulfilling its mission, unless it has intelligent, well-trained, properly motivated employees at all levels, from top management through the rank and file.

Finally, there should be a reemphasis on NARA's role as a service agency. It exists to serve the government and the public. In a democracy such as ours, the archives belong to the people, and NARA's leaders and its employees must never be allowed to forget that they administer an almost sacred trust.

Thank you for giving me the opportunity to offer these comments. If I can be of further assistance, please call upon me.

With personal best wishes.

Sincerely,

James B. Rhoads, Director
Graduate Program in Archives
and Records Management

Letter from Dr. Robert H. Bahmer,
Archivist of the U.S. 1965-68

4059 Donald Street
Eugene, Oregon 97405

August 6, 1986

Hon. Charles McC. Mathias, Jr.
Chairman
Subcommittee on Governmental Efficiency
and the District of Columbia
United States Senate
Washington, D.C. 20510

Dear Senator Mathias:

I appreciate receiving your letter asking my views on the priorities for the newly-independent National Archives and Records Administration. Although I am sure that you know, let me state for the record that I served as Archivist of the United States from 1965 until my retirement in 1968; I was a staff member of the National Archives continually from 1936 (excluding 6 years with the Navy and the War Department in records related work during World War II), seventeen of these years as Assistant and Deputy Archivist.

The function of the National Archives is, today, what it has always been, namely to select, preserve and make available (to anyone who wishes to use them) the permanent records of the United States government. What is vital to understand in assessing the priorities for the agency is that each of the three parts of this mission must be undertaken in a manner that does not harm the credibility of the agency.

Let me explain what I mean by credibility. Because archives are, by definition, unique, they demand special care and they represent special legal and historical evidence. Archivists, as a result, must be seen as especially trustworthy in their stewardship. They must be able to preserve and present that historical evidence and, in addition, demonstrate to the public that they do it in a neutral professional manner. Both Wayne Grover, my predecessor, and I saw the danger of losing that credibility during the time that the National Archives was subordinated to the General Services Administration, and we did our best to maintain that aura of neutral professionalism and to minimize the risk of its loss, the risk of intervention from whatever quarter. Grover, for his part, finally resigned in frustration and took the occasion to write to the President, warning of this very risk.

When I became Archivist of the United States, I determined that the best protection for the institution and the ideal of the neutral archivist was to increase our contacts and linkages with the various professional communities that make up our natural constituency -- the historians, political scientists, genealogists, and all others who depend upon our archival materials and neutrality for success in their endeavors. We did that; we increased our professional contacts through conferences, publications, lectures, internships, etc. Those professional communities not only protected the Archives credibility when threats developed, they also were instrumental in winning the independence fight for the National Archives; they remain an important bulwark for the protection of the Archives' integrity today.

All of this does not mean that either the Congress or the President should fear to touch the National Archives. On the contrary, they should demand of it the same high quality of day to day management they expect from all other agencies. But at the same time they must recognize that the peculiar mission of the National Archives requires special consideration. By preserving and making available the documentary heritage of the United States, the National Archives performs a unique function: it not only promotes the diffusion of knowledge based upon documentary evidence, it also preserves the cultural heritage of the United States.

You also ask what professional qualifications are necessary for the Archivist of the United States. Here I think the question has been answered by the statement issued by the National Coordinating Committee for the Promotion of History, which acted on behalf of the historical and archival community. If I were to add to this list of qualifications, the only thing I would stress is the necessity for thorough professional experience and training in archives. I dislike seeing the Federal government revert to practices which not only would be unacceptable under civil service regulations, but which also have been abandoned by the states of the nation. In the past few years I have seen at least a half dozen major state archives fill their top position through a search of qualified professionals rather than through nepotism or political favortism as in the past. (New York state has done so twice; California, Georgia, Alaska, Oklahoma, Alabama, Utah, and Oregon are other enlightened states that come innediately to mind.) I am not aware that any such search for a top archival professional has been conducted to fill the present vacancy in the top professional archival position in the United States.

As to the current nominee for Archivist of the United States, I must state that I have never met him. Nevertheless, it should be clear from the forgoing parts of this letter that I believe his qualifications fall far short of those necessary for the position.

Sincerely,

Robert H. Bahmer

Robert H. Bahmer

Society of American Archivists
Newsletter, January 1984

Archivist: A Definition

During the past few years, concerns over the status of the archival profession increasingly have been brought to Council. Some archivists are calling for revival of the concept of certification of individual archivists or accreditation of educational programs and/or archival institutions. Others want a clear statement of qualifications for consultants in archives. Still others call for the Society to become involved in protesting changes in proposed qualifications for government archivist positions.

After looking at these concerns, Council recognized that one central issue is the absence of, and the need for, a definition of an archivist. What qualifications characterize and distinguish an archivist from every other professional, particularly professionals concerned with recordkeeping? No one, at this point, can answer that question categorically. Without a definition, no one can determine who is qualified to be a consultant, who is eligible for certification, or what the minimum qualifications for a position called "archivist" should be. Apropos of this concern for the profession, Council, in January 1983, created a Study Group on the Definition of an Archivist to draft a definition.

The Study Group--consisting of Trudy Huskamp Peterson, chair, James O' Toole, and John Fleckner-- was charged to develop a definition that contained elements of theory and practice. The definition submitted by the Study Group is printed below. SAA President David B. Gracy II stated: "As this is a profession- wide concern, Council hopes that this document will stimulate and aid the profession in coming to grips with the problems, challenges, importance, and need of crafting a definition. We encourage your comments."

Direct letters to the Executive Director's office, 600 S. Federal St., Suite 504, Chicago, IL 60605.

The archivist is the trustee of the present and the past for future generations. The archivist is a saver and a destroyer, a holder and a sharer, a student of the past and an assessor of the future, a member of society and a documentor of it. The archivist's purpose is to preserve the evidence of the activities of individuals and institutions in order that others may also know and understand them. The archivist's mission is not to seek truth but to preserve truthfully those materials in which others may seek it. The archivist balances the needs of the records, the records creators, the record keepers, and the public served, assisting the many while keeping faith with the needs of the few. The archivist is a guide and a mentor but not an interpreter, a skeptic and a doubter, perhaps, but a steadfast keeper of the records held in trust.

Archivists share a body of knowledge and a set of values and beliefs, expressed in practice. The definition of an archivist must encompass each of these elements.

I. Knowledge

There are two principal sources of the archivist's knowledge. The first is a general knowledge that is the result of a sound formal education. In particular, for most archivists this includes an emphasis on historical studies, consisting not only of a grounding in certain factual material, but also an introduction to modern historical method, based on the identification and critical use of primary and secondary sources. The archivist is exposed to the fundamentals of literature, sociology, psychology, philosophy, and the sciences; the most important thing an archivist learns from the study of each of these disciplines is an appreciation of the nature of its method or approach to human life.

The second source of the archivist's knowledge is the result of specific education and practice in the discipline of archives. This knowledge inclu an understanding of the historical development and present status of archival practice, both in the archivist's own country and elsewhere; the origins and functions of archival records, their customary forms, arrangements and contents, and their use as research resrouces, and awareness of standards for conduct and practice adopted by the organized profession.

II. Values

As members of a profession, archivists share a set of values. Some of these derive from ethical standards widely shared in our culture and common to other organized professions. These include commitments to objectivity, impartiality, fairness, honesty, and institutional loyalty in dealing with employers, colleagues, and clients. Professionals collaborate with colleagues in pursuit of supra-institutional goals and in the continuing critical evaluation and improvement of professional theory and practice.

Other values are more specific to the archival profession and derive from a unifying belief in the value of historical records to society and of the archival mission to preserve them. These specific values are embodied in a set of commonly held beliefs:

1. Documents in any physical form may contain information that has long-term value.

Archivist: A Definition, cont.

2. Preserving the integrity of the information in the record is a primary responsibility of the archivist and is best assured when the continuity of custodianship is clear.

3. Records have an organic unity, and the information in the records is most completely revealed in the context of that unity.

4. To ensure integrity and organic unity, records should be preserved through a systematic, intentional process that includes both retention and destruction.

5. Records are maintained for use by a variety of clients, and they are organized and described in a manner that will accommodate these divergent needs.

6. Records should be used in a manner consistent with their preservation, the protection of confidentiality of the information contained therein, and the observance of other legal and institutional constraints.

III. Practice

From their knowledge and these beliefs, archivists derive a pattern of thought and practice. Archivists employ an analytical approach to archival materials. They identify the purpose and structure of records, evaluate their physical form, and seek to understand the information contained in them. This approach underlies standard archival practices:

1. Archivists review and judge records of individuals and institutions, such as units of government, businesses, voluntary associations, and educational and religious bodies, in order to select for preservation those with continuing value.

2. Archivists provide a physical and intellectual arrangement of the records in their custody to make the records coherent and usable. In accomplishing this arrangement, archivists maintain as a unit records from a common source and are predisposed toward the maintenance or reconstruction of the original order in which the records were created or compiled.

3. Archivists describe records in a fashion that provides the most information about the records in a concise manner. The precise nature of the description may vary within and among archival repositories, based on the nature of the several bodies of records and the needs of the clients.

4. Archivists provide information about and from the records in their custody and assist clients in using the records. Records are available to clients on equal terms of access.

5. Archivists encourage and promote the use of records through publications, exhibits, educational programs, and other outreach activities. These efforts are directed toward both users of records and the society at large.

6. Archivists are responsible for the preservation of the materials in their custody. In carrying out this responsibility they place first priority on preserving the information contained in the records. Information may be preserved through conservation of the original documents or through copying it onto another storage medium. In either case, archivists stress such preventive actions as maintenance of proper environmental conditions and use of protective storage materials.

SAA Newsletter
January 1984

Role of archivist in making available records to researchers in Modern Archives Principles and Techniques by T.R. Schellenberg

MODERN ARCHIVES
PRINCIPLES AND TECHNIQUES

T. R. SCHELLENBERG

THE UNIVERSITY OF CHICAGO PRESS

1956

Information services: This type of reference service consists of providing information from or about records as distinguished from making the records themselves or copies of them available for use. Information may be provided over the telephone or by letter, written report, or personal conference. Certain requests for information may properly be denied. Among these are requests from persons seeking information for purposes that can be served adequately by the use of published materials in countries where adequate libraries exist. An archival institution should not, as a rule, furnish information from library materials even to persons at work on important research projects; but inquirers may be given general bibliographical suggestions when this can be done without the necessity of special research.

The extent to which information should be provided about records depends on the character of the request. If the request is one about records that are of general interest, and one that for this reason is likely to be repeated, considerable time may be spent in preparing a substantial description of the records. Or if the request is one which, if fulfilled, will result in information about certain records being made generally available, then again considerable time may be spent in providing the information. Less time should be spent on requests for information that contributes only to the pursuit of one person's hobby.

In general, an archivist should help inquirers in every way possible. He should direct them to the records that are of interest to them. Although he should not presume to direct their researches, he should provide such information about records, and their value, as will prove suggestive to them in opening up new fields of inquiry. But he should interpret records only in the sense of identifying and describing them, not in the sense of making known their meaning in relation to some subject. He should not say that the record shows this or that or that it supports one interpretation as against another. His interpretations should be designed solely to make known the character and literal content of records. His relationship to all searchers is a professional one. He should not casually discuss the work he knows them to be doing. But if knowledge of research already being engaged in by one searcher will be helpful to another, he may ask permission to inform the other that such research is in progress. Finally, if he conducts researches of his own, he should do this in an unofficial capacity; for he is hired to be an archivist, not a researcher. He should not subordinate his professional duties to his own research interests. In a word, he should give his knowledge about records unstintingly, even at a sacrifice of his own research interests.

The archivist thus may be regarded as a hewer of wood and a drawer of water for the scholars. In cynical moments he may observe that the wood he has hewn is just being converted into a lot of "learned lumber" or that it is being cut on the bias; and that if the scholarly uses of his materials are futile, his work in behalf of them is even more so. But this view does not place his work in its true perspective. Historians may lose their balance, their objectivity, their attitude of suspended judgment, as they often have, in times of trouble. They may be as "clouds that are carried by the tempest" of ideological prejudices. The archivist's job at all times is to preserve the evidence, impartially, without taint of political or ideological bias, so that on the basis of this evidence those judgments may be pronounced upon men and events by posterity which historians through human failings are momentarily incapable of pronouncing. Archivists are thus the guardians of the truth, or, at least, of the evidence on the basis of which truth can be established.

Mid-Atlantic Regional Archives Conference

Delaware
District of Columbia
Maryland
New Jersey

New York
Pennsylvania
Virginia
West Virginia

mid-atlantic archivist

September 19, 1986

The Honorable Charles McC. Mathias, Jr.
Committee on Governmental Affairs
United States Senate
Dirksen Senate Office Building, Room 340
Washington, D.C. 20510-6250

Dear Senator Mathias:

On July 11, 1986 I wrote to the Senate Governmental Affairs Committee on behalf of the Mid-Atlantic Regional Archives Conference concerning the nomination of Dr. John T. Agresto to be Archivist of the United States. My letter summarized a meeting with Dr. Agresto on June 17 regarding his nomination and, based in large part on the results of the June meeting, respectfully urged the Senate to withhold confirmation of this appointment. Since sending our recommendation to the Governmental Affairs Committee we have received two requests for additional information, which I am happy to supply at this time.

As indicated in our initial letter, the spring 1986 Mid-Atlantic Regional Archives Conference meeting authorized the creation of a special committee to seek Dr. Agresto's views on the role of the Archivist of the United States in directing the newly independent National Archives and Records Administration and on the requisite qualifications for the post. In formulating its position on the nomination our organization felt it best to talk directly with Dr. Agresto. When he agreed to such a discussion, I and two other MARAC officers - Vice-Chair Martha C. Slotten and District of Columbia representative Thomas Connors - met with the nominee in his offices at the National Endowment for the Humanities on June 17. The hour-long meeting focused on the role of the Archivist of the United States, the future direction of NARA, Dr. Agresto's scholarly and professional qualifications, and, where appropriate, on questions raised about how independent and non-partisan he would be if confirmed as well as the implications of his previous opposition to Equal Employment Opportunity Commission guidelines at the National Endowment for the Humanities.

With some exceptions in the areas of independence and partisan considerations, Dr. Agresto's responses to these questions reinforced concerns about his knowledge of the archives field and his qualifications for performing "the duties and responsibilities of the office of Archivist." Many statements anticipated later testimony before the Senate Committee, namely that regarding the Justice Department memorandum on executive privilege as applied to presidential papers and his emphasis on drawing greater attention to the National Archives and educating the general public about its contents. His immediate comments said little or nothing about scholarly programs at the Archives, but, when asked, he outlined plans for seminars and other research-related activities.

In discussing his qualifications, Dr. Agresto stressed that he is a historian who welcomes an opportunity to increase the visibility and resources of the National Archives. He pointed to his record of appropriations for the National Endowment for the Humanities, and discussed private and governmental fundraising opportunities for NARA. He specifically mentioned at some length what he described as a previously untapped opportunity for major funding through NEH, a plan suggesting that Dr. Agresto lacks an understanding of permissible funding options for the Administration he seeks to head. On related topics, he demonstrated little knowledge of major archival issues related to Presidential Libraries, Records Centers, and declassification, adding, however, that as Archivist he would depend on appropriate experts within NARA when necessary.

Dr. Agresto devoted considerable attention to answering criticism of his earlier position on EEOC. He made it clear that he still did not believe in "quotas" but would comply with EEOC guidelines since he is required to do so. Returning several times to his point that NEH had voluntarily met, or even exceeded, these guidelines, he reiterated his philosophical opposition to mandatory quotas, saying he would comply, but not gladly.

As stated in my letter of July 11, the Mid-Atlantic Regional Archives Conference strongly urges the selection of an Archivist of the United States with the highest scholarly and professional qualifications. Our meeting left little doubt that John T. Agresto fails to meet these essential standards. He clearly lacks the appropriate background and knowledge of archives administration. It is for this reason that MARAC recommended that the Senate Governmental Affairs Committee withhold confirmation.

Sincerely,

Robert C. Morris

Dr. Robert C. Morris
Chair

WILLIAM V. ROTH, JR., DELAWARE, CHAIRMAN

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United States Senate

COMMITTEE ON
GOVERNMENTAL AFFAIRS
SUBCOMMITTEE ON
GOVERNMENTAL EFFICIENCY AND THE DISTRICT
OF COLUMBIA
WASHINGTON, DC 20510

October 2, 1986

The Honorable William V. Roth, Jr.
Chairman
Committee on Governmental Affairs
Washington, D.C. 20510

Dear Mr. Chairman:

We are writing to clarify the hearing record with respect to the nomination of John Agresto for Archivist of the U.S.

During the course of our hearings on this nomination and in subsequent written responses to hearing questions, Mr. Agresto implied that the General Accounting Office had investigated his record at the National Endowment for the Humanities and had found no improprieties or violations of law.

As you know, the Committee requested the assistance of GAO in looking into the background and activities of Mr. Agresto and was detailed two persons from GAO. These individuals were instructed to and operated as staff of the Committee during their detail. A copy of your letter requesting GAO's assistance and The Comptroller General's assignment of two persons are enclosed.

GAO was neither asked nor did it provide to the Committee any formal findings or report on the nominee. The findings of the two detailees were provided in informal briefings to Committee staff. Committee members drew their own conclusions about the nominee from that information as well as a variety of other sources.

Mr. Agresto was incorrect in stating to the Committee on September 9, "The General Accounting Office came over to my agency and for weeks waded knee-deep in 30,000 proposals looking for partisan or political grants, Senator, and they came up with nothing, as you know, as they told this Committee." As you know, the detailees from GAO looked into 7 NEH grants during Mr. Agresto's tenure and provided a briefing book to Committee staff on them. No GAO findings or conclusions were sought by or provided to the Committee on this or any other area of investigation into Mr. Agresto's background.

We, therefore, request that the record be corrected in this regard and that this letter and its enclosures be made a part of that record for that purpose.

Thank you for your attention to this request.

With best wishes,

Sincerely,

Mac

Tom

Thomas F. Eagleton
Ranking Minority Member

Charles McC. Mathias, Jr.
Chairman

Enclosures (2)

WILLIAM V ROTH JR. DELAWARE CHAIRMAN

TED STEVENS ALASKA
CHARLES McC MATHIAS JR. MARYLAND
WILLIAM S COHEN MAINE
DAVE DURENBERGER MINNESOTA
WARREN B RUDMAN NEW HAMPSHIRE
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CARL LEVIN MICHIGAN
ALBERT GORE JR. TENNESSEE

FRANKLIN G POLK CHIEF COUNSEL AND STAFF DIRECTOR
MARGARET P CRENSHAW MINORITY STAFF DIRECTOR

United States Senate
COMMITTEE ON
GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510

June 10, 1986

The Honorable Charles Bowsher
Comptroller General of the United States
U. S. General Accounting Office
441 G Street, N. W.
Washington, D. C. 20548

Dear Chuck:

As you know, my Committee, among others, has the responsibility of considering certain Presidential nominees. In view of a current nomination inquiry which will require investigative work within several federal agencies and the short time remaining in this session, I believe the full-time assistance of General Accounting Office detailees would greatly assist us in our work. Such persons are needed immediately and until the end of July.

As you know, the Legislative Branch Appropriations bill for fiscal year 1985 changes the Senate's rules with respect to reimbursement of detailees. As a result, committees are no longer required to reimburse the General Accounting Office for the services of detailed employees.

I appreciate your attention to this request. Your staff may contact Mr. Frank Polk of my staff at 224-4751 if there are any questions.

Sincerely,

Bill

William V. Roth, Jr.
Chairman

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

19 JUN 1986

The Honorable William V. Roth, Jr.
Chairman, Committee on Governmental
  Affairs
United States Senate

Dear Mr. Chairman:

We have received your letter of June 10, 1986, requesting the full-time assistance of two General Accounting Office detailees to assist your Committee in work regarding the responsibility of considering certain Presidential nominees.

In response to your request we are detailing Mr. Robert L. Giusti and Mr. John W. Lewis of our General Government Division effective June 16, 1986, for approximately two months.

Sincerely yours,

Charles A. Bowsher
Comptroller General
of the United States

NATIONAL ENDOWMENT FOR THE HUMANITIES

WASHINGTON, D.C. 20506

October 28, 1986

The Honorable William V. Roth
United States Senate
Washington, D.C. 20510

Dear Senator Roth:

Thank you for the opportunity to comment on the October 2, 1986 letter from Senators Eagleton and Mathias to you.

Prior to the hearings on my nomination, two investigators from the General Accounting Office, working under the direction of the staff of the Committee, came to the NEH to look into grant awards and rejections made throughout my tenure at the agency. I was told that, among their tasks, they were to look for possible partisanship or "politicization" in the grant review process.

This agency cooperated fully and completely with these investigators. I testified that they had available to them over 30,000 files. This is indeed true, since they were given full and complete access to every grant made during the four years I have been at the Endowment. They asked for and were given permission to interview staff, and they did. Within two days of their arrival, they had met with the head or acting head of every division at NEH as well as with all senior staff at the agency. The investigators then began a search of NEH files that continued for many days. Whatever they asked for, they were immediately given. Our records show that, by the end of their search, they requested or were supplied 19 grant files for review.

I did not mean to suggest that these investigators read 30,000 grant files. Since some of these files are upwards of 200 pages each, this would be an impossible task. What I do mean, however, is that they had access to all 30,000 files and freely investigated whatever grants they thought appropriate. And, as they said in their exit interview with me, they could find no evidence of any partisanship or "politicization" in the NEH grant process whatever.

The Honorable William V. Roth
October 28, 1986
Page 2

Since some have raised the question of partisanship in their testimony against my nomination, I am pleased to be able to take this opportunity to give this additional evidence to the contrary.

Sincerely,

John Agresto

John Agresto
Deputy Chairman

[From the Washington Post, October 3, 1986]

PANEL DROPS NOMINATION OF AGRESTO

(By Mary Battiata)

The name of John T. Agresto, the Reagan administration's controversial choice to head the National Archives, was removed from the voting agenda of a Senate confirmation panel yesterday. The move ends action on the nomination in the 99th Congress and sends Agresto's name back to the White House.

"As far as we're concerned, the nomination is pretty much dead," a spokeswoman for the Senate Committee on Governmental Affairs said yesterday.

However, Robert H. Tuttle, White House director of personnel, said yesterday that Agresto remains President Reagan's choice and that the administration will renominate Agresto next session if necessary. "More than any other individual I interviewed, John Agresto had a plan to really make the archives an institution we can be proud of," Tuttle said.

Asked if the president would exercise his option to appoint Agresto during the congressional recess, Tuttle said, "We will think about it." A recess appointment would install Agresto at the archives immediately and give Congress a year to approve or veto the appointment retroactively.

Agresto's name was placed on the agenda of the Senate panel earlier this week, apparently in the expectation that enough support existed among Republican committee members to send the name to the full Senate for confirmation. When the committee met yesterday, however, not enough Republican committee members were present to form a quorum. Democrats offered to make up the difference if Agresto's name were removed from the agenda. Committee Chairman William V. Roth Jr. (R-Del.) told committee members that the panel would not meet again this session, according to congressional sources.

The nomination of Agresto, a former acting chairman of the National Endowment for the Humanities and a protégé of Education Secretary William Bennett, is opposed by 16 of the archives' major user groups, including the Organization of American Historians and the Society of American Archivists, as well as by civil rights organizations. Spokesmen for those groups told committee members earlier this year that they believed Agresto, 40, a political scientist by training, lacks the political independence and professional qualifications Congress had in mind when it separated the archives from the General Services Administration two years ago. Under that law, the archivist has no fixed term of office and may be removed only for cause.

Chief among the concerns of Agresto's critics is the role he might play in the long-running legal battle between former president Richard Nixon and Congress over access to Nixon's presidential papers. Agresto has testified that he would not feel bound by a Reagan administration memo that critics say would block public access to the documents. Under federal law, records of the Nixon presidency became public property in 1974. Agresto also has been questioned about the impartiality he would show when it is time for the archivist to preside over the planning of the Reagan presidential library and disposition of the Reagan papers.

Agresto's nomination also has drawn the ire of committee Democrats, who say the White House has politicized the selection process, in violation of recent federal legislation requiring the archivist to be chosen "without regard to political affiliations and solely on the basis of professional qualifications."

Sen. Thomas Eagleton (D-Mo.) accused the White House of "polluting" the selection process by subjecting potential nominees for the archivist job to a questionnaire about their political affiliations, voting records and campaign contributions.

Two potential nominees, historian Richard Kirkendall and David Gracy, president of the Society of American Archivists, received such quesitonnaires from the White House and wrote to Senate committee members to question the property of the queries. Agresto testified earlier this year that he had answered similar questions and acknowledged that he believed those questions to be inappropriate.

Agresto's performance as acting chairman of the humanities endowment has been criticized by civil rights organizations. The endowment, first under Bennett and then Agresto, was one of three federal agencies that refused to comply with federal minority hiring guidelines. Agresto has defended his record on the hiring and promotion of minority and women employes at the endowment as better than the federal average. He said that while he is opposed to affirmative action quotas, he would comply with federal guidelines if confirmed.

Since the last public hearing, committee Democrats have complained privately that a pro-Agresto witness Alfred M. Rotondaro, executive director of the National

Italian American Foundation, did not tell the committee that six months earlier Agresto had awarded the foundation a $10,000 "chairman's grant" from a discretionary fund after an application for $30,000 was rejected by an endowment panel.

Agresto declined to comment on yesterday's committee action. A spokesman for the humanities endowment however, said Agresto expects to be confirmed.

The National Italian American Foundation
[illegible]

1986 OCT -7 AM 10 02

Chairman of the Board
[illegible]
President
[illegible]
Senior Vice President
[illegible]
Vice President Administration
[illegible]
Board
Regional Vice Presidents
[illegible]
Secretary
[illegible]
General Counsel
[illegible]
Treasurer
[illegible]
Immediate Past Presidents
[illegible]
Board of Directors
[illegible]
Director of Women's Affairs
[illegible]
Executive Director
[illegible]

October 6, 1986

Senator Thomas F. Eagleton
Committee on Governmental Affairs
Senate Dirksen Building, Rm. 340
Washington, DC 20510

Dear Senator Eagleton:

I was very disturbed to read in the October 3rd Washington Post that Senate Democratic members of the Governmental Operations Committee had "complained privately" that I had not noted in my testimony in support of Dr. John Agresto for the post of National Archvist that my organization had received a $10,000 grant from the National Endowment for the Humanities.

The obvious implication of this statement is unfair both to Dr. Agresto and to the integrity of the National Italian American Foundation.

A little history is, I believe, in order.

To begin with, I had never even met Dr. Agresto prior to several months ago. Our NEH application went through normal NEH channels and was recommended unanimously by independent reviewers for NEH in the early part of this year.

Without going into the history of this grant application--which I would have been or would still be happy to do -- please note that we were finally awarded a challenge grant of $10,000. This meant that we would receive the NEH funds only on the condition that we raised through independent sources at least an additional $10,000.

The results of this small grant are illustrated in the enclosed brochure describing the conference to be held next month at Boston University. I believe you will agree that a session of this importance and international scope is hardly fully funded by $10,000 nor does that sum represent any monetary largesse to the NIAF.

Some additional background on the NIAF is in order. This grant is one of several received from NEH by the NIAF over the course of the last ten years. The majority and by far the largest of these grants came during the

Democratic administration of President Jimmy Carter. We received these grants because we are a national organiation of considerable competence engaged in issues of importance to the National Endowment for the Humanities. Despite these grants, you should know that we are largely, in fact almost entirely, funded by private donations.

If there were private complaints, I certainly feel we should have been extended the courtesy of having them brought to my attention rather than having them cited as a possible excuse to vote against a highly talented individual.

I am most upset about the comments made in the Post not because of myself or my organization--our reputation for integrity is strong and will remain so despite this type of sniping--but because of the implication that some members of the Committee would vote against Dr. Agresto in part because of this grant.

As I stated in my testimony, we enthusiastically support Dr. Agresto for the post of National Archivist because we believe he will bring what the New Republic in an editorial endorsing his nomination said he has in "abundance: administrative imagination and fortitude." The editorial also cited his "reputation for personal fairness and intellectual vigor."

I repeat today what was said earlier: the National Italian American Foundation strongly endorses his nomination for National Archivist and urges your vote in his support.

Sincerely,

Alfred Rotondaro

Alfred M. Rotondaro, Ph.D.
Executive Director

AMR/bh
Encl:

NATIONAL ENDOWMENT FOR THE HUMANITIES

WASHINGTON, D.C. 20506

February 27, 1980

Dr. Maria Lombardo
The National Italian American
  Foundation
666 11th Street, N.W.
Washington, DC 20001

Ref. RX-20763

Dear Dr. Lombardo:

I regret to inform you that your application for a grant from the National Endowment for the Humanities has not been approved for funding.

Each application is reviewed first by scholars in the humanities who, both as individual reviewers and as members of a panel, consider the applications received on a given program deadline. The reviewers' and panelists' recommendations are forwarded, together with additional information compiled by the Endowment's staff, to the National Council on the Humanities, a board of twenty-six citizens appointed by the President of the United States. The Endowment's Chairman makes the final decision on each application, based on the advice that he has obtained from the specialists, the staff, and the Council. Consideration is given both to the merit of the individual proposal and to its relative strength in competition with others.

If you have questions about the review of your application, please feel free to write to the member of the Endowment's staff with whom you have corresponded previously about your application or to me.

Sincerely,

Richard Ekman
Director
Division of Research
  Programs

cc: Alfred Rotondaro

NATIONAL ENDOWMENT FOR THE HUMANITIES

WASHINGTON, D.C. 20506

March 3, 1986

MEMORANDUM FOR: Mr. Kingston

FROM: Richard Ekman

SUBJECT: Emergency Grant Request From the National Italian American Foundation

I have discussed the letter from NIAF with staff members and we agree that it neither adds to nor alters their original application. The letter is, in fact, merely a series of unelaborated assertions. No new information seems to have been produced.

Additionally, the letter makes no case for the existence of an emergency. While it is true that the originally-proposed date for the conference would fall before the review process for the next Conferences cycle was completed, the applicant provides no reason why the conference could not be postponed. (We could accept the proposal now, of course, as a late submission to the February 15 deadline, but since the proposal is in no way revised to address the reviewers' and panel's concerns, there would be no point.)

Since Mr. Rotondaro's letter provides no information that counters the comments of reviewers and panelists, and supplies no justification for viewing the situation as an emergency, our recommendation is that the request be disapproved.

cc: Ms. Premo
Mr. Hopkins

NATIONAL ENDOWMENT FOR THE HUMANITIES

WASHINGTON, D.C. 20506

March 18, 1986

MEMORANDUM

TO: John Agresto

FROM: Thomas S. Kingston TSK

SUBJECT: Emergency Grant Request: National Italian American Foundation

Attached is an original application (rejected) and subsequent letter requesting reconsideration of the application as an emergency grant in the amount of $10,000 outright and $7,592 matching to support a two-day conference on the Italian bureaucracy's systematic countermanding of German-Italian policy regarding Jews during World War II. The nature of the emergency is that the Foundation has scheduled the conference for next fall, and the February 15 deadline for the next round of conference applications had passed when the organizers received information about the original rejected application.

The Division of Research Programs recommends rejection of the request. I attach the memorandum which provides the division's reasons.

I recommend funding, at a level not to exceed $10,000 and all in matching funds. I understand the division's arguments; however, I believe the letter from Alfred Rotondaro does amplify the grounds for the conference and attempts to explain that the design does not reside in a notion of dissemination but rather in a mission of defining the scholarly work which needs to be done on this topic. The original panel review of the application resulted in a "some merit" classification, almost solely predicated upon the argument of one reviewer who contended that the conference would disseminate and that therefore the activities would be better completed by means of some sort of festschrift. The conference organizers, I believe, took this reservation to heart and have addressed it as well as possible at this point. If we were to expect the organizers to establish the agenda in full, then they would be liable to be accused of foreclosing options or of controlling the likely outcome of the meeting.

Memorandum to John Agresto
March 18, 1986
Page Two

I appreciate that the division has said the organizers could have submitted a late application. But in all good faith, when the organizers met with me on February 26, I told them the deadline had passed; and I (admittedly erroneously) presumed that the February 15 submission date was firm. The reason the conference cannot easily be postponed is that some of the international scholars have made a commitment and, given their reputations and schedules, rescheduling would be difficult and protract--probably by at least a year--the work on this topic.

I suspect the original panel also had some concern that this kind of topic in the hands of an admittedly pro-Italian consortium might not receive fully objective treatment. I predicate my suspicion on the comments of one panelist who wrote: "may be ethnically self-serving." At the same time, all panelists and reviewers have lauded the calibre of those scholars already invited to the conference. I believe this fear to be remote and do not grant it much credence.

The reason I recommend a reduced award, all in matching funds, resides in my judgment that the Foundation will be able to find substantial private support for such a topic which should appeal to a rather large interested public. Because this topic may well emerge as a major new dimension within Holocaust studies, I also believe the Endowment should give the conference its endorsement.

Attachments

APPROVE for funding:

John Agresto, Atg Chairman

Funding: $ $10,000 Match

Date: March 18

DISAPPROVE for funding:

John Agresto, Atg Chairman

Date: ______

NATIONAL ENDOWMENT FOR THE HUMANITIES

WASHINGTON, D.C. 20506

March 21, 1986

MEMORANDUM

TO: Richard Ekman

FROM: Thomas S. Kingston TSK

SUBJECT: Emergency Grant Request: National Italian American Foundation

The Acting Chairman has approved an emergency grant of up to $10,000--all in Treasury funds--to support the Italian-American Foundation's Holocaust conference. I have spoken by telephone with Maria Lombardo to inform her about the decision and would ask the Division to coordinate the official offer letter.

Because there has been honest difference of opinion about whether or not the grant request should have been approved, I have taken the liberty of writing the explanation justifying funding for the next Council book. I attach a copy of that explanation.

Thank you.

Attachment

w
award letter
attached

NATIONAL ENDOWMENT FOR THE HUMANITIES

WASHINGTON, D.C. 20506

11 APR 1986

11 APR 1986

Dr. Alfred Rotondaro
Executive Director
National Italian American Foundation
666 11th Street, N.W.
Washington, D.C. 20001

Ref: RX-20843

Dear Dr. Rotondaro:

I write to inform you that the Endowment offers to provide matching funds of up to $10,000 in support of the project entitled "Italians and Jews: Rescue and Aid During the Holocaust" under the direction of Dr. Maria Lombardo.

This offer is conditional upon (1) an equal amount of eligible gifts being raised for the project and either certified or forwarded to the Endowment by January 31, 1987, and (2) the availability of sufficient funds allocated for matching purposes in the Research Conferences Program of the Division of Research at the time the certification or the gift is received by the Endowment. Please see the enclosed "Treasury Matching Fund Guidelines" for details on the eligibility of gifts and their certification.

In addition, in accordance with a telephone conversation on April 7, 1986 between Dr. Lombardo and Alice Hudgins of the NEH Grants Office, a revised budget must be submitted. A copy of the Endowment's current budget form is enclosed for this purpose; however, you may use the same form that was in your application. Please note that for grantees who do not have a current federally negotiated indirect cost rate, a rate of 10% of direct costs, up to a maximum of $5,000, may be charged. Also, proposed cost sharing of $17,730 for items such as office space, accounting and office expenses should be deleted from the budget. Please review the "Project Costs" section of the budget and compare it with the "Project Funding" section to be sure that all budgeted costs are supported by a source of funding listed.

You are cautioned that this letter does not constitute an award and that the offer may be withdrawn at any time prior to the acceptance of a gift or certification of a gift by the Chairman

Revised letter
attached

of the Endowment. Should you have any questions regarding the content of this letter, I would suggest that you contact Crale Hopkins of the Division of Research Programs, Room 319, NEH. Questions regarding the preparation of the revised budget may be directed to Alice Hudgins at 786-0011.

Sincerely,

John Agresto
Acting Chairman

Enclosure

cc: Maria Lombardo

WSJ
1-7-86
P 28

Constitutional Birthday: To Secure the Blessings of Grants . . .

By Martin Morse Wooster

What do a patriarch of the American conservative movement, the nation's largest children's television advocacy group, the producers of Milton Friedman's television series, "Free to Choose," and a leading science magazine [illegible] have in common?

Answer: They're all getting tax dollars from the National Endowment for the Humanities to celebrate the bicentennial of the Constitution.

Some of the $11.5 million NEH is committing to bicentennial programs is being used to preserve the past. For example, NEH grants are helping to preserve the papers of 18th-century statesmen Albert Gallatin and Robert Morris as well as to restore the grounds around Thomas Jefferson's Monticello.

Yet most of the money isn't being used for preservation. It is as if what is being celebrated is not the Constitution, but the bicentennial of wasteful federal spending.

The waste is largely because of what acting NEH chairman John Agresto describes as "media outreach"—funding as many television programs as possible, including 13 grants to independent producers and seven to such public broadcasting stations as WGBH in Boston and WNET in New York, two of the nation's largest.

"I'd like to see even more television subsidized by NEH," Mr. Agresto says, "but no song and dance routines if we can help it."

Some of the programs NEH is funding have as little to do with constitutional history as the songs and dances in the musical "1776." Eugene Bunge, senior producer for cultural affairs at Nebraskans for Public Television, explained in an interview that for three years he was unable to persuade corporate donors to fund production of a drama about the trial of Ponca Indian Chief Standing Bear because potential donors thought the project "too esoteric." Nevertheless, NEH gave him $174,322 to produce the show as a bicentennial project. Mr. Bunge says that his subject is obscure, but that federal funds are needed because the trial "was the first time that Indians were treated as people."

If many of NEH's television grants are wasteful, the bicentennial grants to political organizations might well violate regulations prohibiting federal funding of political organizations.

Some NEH grants are still going to the left, with such veteran recipients of federal welfare as the American Political Science Association and the National Council on the Aging still on the dole five years into a conservative administration.

In at least one case, tax dollars were used for outright lobbying. Action for Children's Television, an organization described in an interview by its president, Peggy Charren, as "an advocacy group attacking the administration," used a $25,000 NEH grant to hold a "workshop" in which such prominent liberals as Harvard University psychiatrist Alvin Poussaint and New York Times columnist Anthony Lewis badgered executives from the three major networks for more "educational" children's television. ("There's two kinds of television," Ms. Charren explains. "Right wing and ... educational.")

Ms. Charren says she was pleased that her lobby received tax dollars from NEH. "It shows how open they are."

Even more disturbing than NEH's left-wing grants are the funds distributed to conservative organizations. These groups are at least nominally committed to reducing the size of government—except when government can be used to increase their own budgets.

While established groups such as the American Enterprise Institute are receiving bicentennial funds, NEH has preferred to give money to individuals and smaller, less well known groups. Conservative patriarch Russell Kirk received $20,000 for a study of Edmund Burke. Many of these small groups lack an extensive history. For example, the Center for the Study of the Constitution, which received $[illegible] to run a lecture series, is nominally located at Dickinson College in Pennsylvania. In fact, says Gary L. McDowell, a former Dickinson professor who now works as a public-affairs officer in the Justice Department, the Centre is currently "just a lot of files."

The grant is actually directed by Richard Stevens, associate dean of the Defense Intelligence College in Washington. The $[illegible] grant allows Mr. Stevens to moonlight for, as he says, "12 to 15 hours a month, at odd hours and on the weekends, selecting speakers."

The most successful conservative recipients of cultural welfare are the Claremont Colleges and affiliated organizations in Claremont, Calif., which received seven grants totaling $1.1 million, nearly 10% of the NEH money committed to the bicentennial. "Claremont is the intellectual capital of the Western world," says Claremont Institute's bicentennial program director, Ken Masugi, who administers a $[illegible] lecture series grant. "It's time we got our fair share."

Public Research, Syndicated is using its $[illegible] in tax dollars to put the government in the newspaper syndication business, using federal funds to distribute articles on the Constitution, including ones written by conservative officials such as Chief Justice Warren Burger, Attorney General Edwin Meese and President Reagan himself. At least a dozen think tanks—most of them conservative—send out such columns at no charge to the state, but PRS vice president Larry Arnn thinks that taxpayers should be forced to subsidize his syndicate because, "There is this money which is going to be spent. It might as well be spent wisely."

Most conservatives receiving subsidies are not as crude as Mr. Arnn in their explanations. For example, [illegible], a McKean, Pa., firm best known for producing Milton Friedman's "Free to Choose" television series, recently received $[illegible] to write two scripts for a proposed series on political philosophy. Yet [illegible]'s president, Robert Chitester, believes that the NEH should be abolished. He even complains that he was denied full funding for his proposed series because NEH panelists accused his would-be host, Reason magazine senior editor Tibor Machan, of being "a popularizer of libertarian views." Mr. Chitester sees no contradiction in taking funds from an agency he wants to abolish. "I'm against the income tax, but I pay my taxes," he says.

Mr. Agresto, the acting NEH chairman, says he hopes Americans will "know and ask questions" about the Constitution as a result of NEH bicentennial programs. Yet surely members of Congress, who recently voted $[illegible] million in appropriations for the NEH, should begin to ask questions about how that money is spent. Liberals concerned about government funding of the right and conservatives worried about government funding of the left should unite to ensure that NEH's budget is reduced enough so that its remaining energies are concentrated on scholarship—not politics.

Mr. Wooster is Washington editor of Harper's Magazine.

NEWS

National Endowment for
the Humanities

1100 Pennsylvania Avenue, N W
Washington, D C 20506

Public Affairs Office
Media Relations

(202) 786-0449

Contact: Susan Metts 786-0446
Darrel deChaby 786-0449
Noel Milan 786-0449

FOR RELEASE: 10:00 a.m. (EDT) Tuesday, September 17, 1985

HUMANITIES ENDOWMENT OFFICIAL APPEARS BEFORE BICENTENNIAL COMMISSION; ACTING CHAIRMAN JOHN AGRESTO ANNOUNCES TWO NEW PROGRAMS

Grants Awarded to Promote Interest in, Understanding of U.S. Constitution

160 Grants for $11.5 Million Made to Date in Bicentennial Initiative

WASHINGTON, Sept. 17 -- In an appearance at the first public meeting of the Commission on the Bicentennial of the United States Constitution, John Agresto, acting chairman of the National Endowment for the Humanities (NEH), announced two new projects that expand an NEH initiative established in 198 to prepare for the Bicentennial.

Agresto also described several projects that have received NEH funding from among more than 160 awards for projects related to the Bicentennial of the Constitution made by the Endowment since 1982. To date, these projects such as conferences, symposia, lecture series, research fellowships, publications, programs for radio and television, and other activities, have received nearly $11.5 million from NEH.

"All our activities have had one common goal," Agresto said before the members of the Commission, "to take the Constitution seriously, as seriously as it was taken by those who drafted it and those who debated it.

"By taking it seriously," Agresto added, "I mean taking seriously and considering thoughtfully the questions about human life and the purposes of government that were in the minds of the Founders, the books they read, the problems they saw and tried to resolve, and the arguments they made in support of their choices."

- More -

At the hearings of the Bicentennial Commission, which took place on the 198th anniversary of the signing of the U.S. Constitution, Agresto announced a new national program that will give young scholars an opportunity to study, to do research, and to write about the American Constitution.

Agresto said the new Bicentennial grants will offer awards ranging from $1,800 - $2,200 to younger scholars in universities, colleges, and high schools to conduct independent research and writing projects during the summer of 1986 under the guidance of a humanities teacher or professor. Deadline for the applications is Dec. 15, 1985, with winners announced in March 1986. The Endowment anticipates making approximately 50 to 75 grants.

Agresto also announced a pilot program of three Bicentennial Seminars for Law Professors, designed to offer law professors a unique opportunity to read, write, or reflect on the historical and philosophical origins and meaning of the Constitution. The seminars will be held during the summer of 1986 at the University of Chicago, Bowdoin College, and Claremont College.

"Nearly 200 years ago," Agresto said, "the Founders of this country gave to us and to the world a brief document that set down the foundations of free government and constituted us as a people. We honor them, and enrich ourselves, when we pause to study what they knew and what they gave to us."

The National Endowment for the Humanities, which is marking its 20th anniversary this year, is an independent federal agency that supports research, scholarship, education, and general audience programs in the humanities.

# # #

EDITORS PLEASE NOTE: Attached are the following: A state-by-state list of both individual and institutional grants awarded as part of the NEH initiative to mark the Bicentennial of the U.S. Constitution; a fact sheet on the NEH Office of the Bicentennial of the United States Constitution; and a fact sheet on the NEH Younger Scholars program.

Application/Grant History

NOTE: This project is a joint undertaking by three groups: The American Historical Association, the American Political Science Association, and Maryland Public Television.

Applications pending: none

Applications rejected: none

Grants funded: 2

Grant Number	Official Grantee	Amount Awarded
1. EG-20007-85	American Historical Association	$145,000
2. EG-20029-85	Maryland Public Television	245,000 ($145,000 obligated to date; $100,000 in Federal matching funds to be obligated pending certification of $100,000 in gifts.)

(see following pages for further information)

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                         -----AWARDS AND APPROVALS-----              PAGE:
                         ------------------------------

GP-21037-83-  -0-0  Grantee:INST/ORGANIZ       **APPROVED DATE:              08/83
Ms. Sheilah Mann                               **START DATE               01/01/84
American Political Science Association         **END DATE                 12/31/86
Washington, DC 20036                           **APPROVED OR            389,780.00
CONG.DISTRICT: 88   AT LARGE                   **FUNDED OR              389,780.00
TITLE:    "This Constitution": A Bicentennial Chronicle
PROJECT DESCRIPTIONS:
To support research into Constitutional history to be adapted for
pre-collegiate and undergraduate education and public discussion; publication
of a magazine of scholarly articles; and program suggestions to go to
organizations capable of developing such programs.
-------------------------------------------------------------------------------------


GP-20325-82-  -0-0  Grantee:INST/ORGANIZ       **APPROVED DATE:              07/82
Dr. Sheilah Mann                               **START DATE               01/01/83
American Political Science Association         **END DATE                 12/31/83
Washington, DC 20036                           **APPROVED   OR           24,924.00
CONG.DISTRICT: 88   AT LARGE                   **FUNDED     OR           24,524.12
TITLE:    A Constitutional Bicentennial Chronicle
PROJECT DESCRIPTIONS:
To support planning for a magazine to serve as an educational resource for
organizations and institutions in developing Bicentennial programs.
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MISCELLANEOUS

NATIONAL ENDOWMENT FOR THE HUMANITIES

WASHINGTON, D.C. [illegible]

May 14, 1986

Mr. David H. Martin
Director
Office of Government Ethics
Washington, DC 20044

Dear Mr. Martin:

This letter sets forth the steps I intend to take upon my confirmation as Archivist of the United States with respect to my financial interests and those of my wife and dependent children, as reported on my Financial Disclosure Statement (SF-278). This letter also sets forth my intended policy of recusal from participation in particular matters as Archivist of the United States.

I will recuse myself and will decline to participate in any particular matter which may arise involving my wife's employer, Aspen Systems, my mortgagee, Oberlin College, or my publisher, Cornell University Press.

Further, I will recuse myself from participating in any other particular matter in which I have a financial interest within the meaning of 18 U.S.C. 208. In appropriate cases within the scope of this and the preceding paragraph, in lieu of recusal, I may seek a waiver under 18 U.S.C. 208(b).

Finally, I will recuse myself from participation, on a case by case basis, in any particular matter in which, in my judgment, it is desirable for me to do so in order to avoid the possible appearance of impropriety, despite the lack of any actual conflict of interest. I believe that this general policy, to which I am committed, will avoid not only the occurrence of any actual conflict of interest, but even the appearance of any conflict between my duties as Archivist of the United States and my personal financial interests, while at the same time enabling me to fully participate in generic policy decisions at the National Archives and Records Administration (NARA).

I intend to notify NARA's Designated Agency Ethics Official, my immediate staff, and the NARA office heads and staff directors of this recusal policy and to direct my staff to advise me when any particular matter arises in which it may be necessary or desirable for me to recuse myself.

Sincerely,

John Agresto
Acting Chairman

cc: Mr. Gary Brooks
National Archives and
Records Administration

WILLIAM V. ROTH, JR., DELAWARE, CHAIRMAN
TED STEVENS, ALASKA
CHARLES McC. MATHIAS, JR., MARYLAND
WILLIAM S. COHEN, MAINE
DAVE DURENBERGER, MINNESOTA
WARREN B. RUDMAN, NEW HAMPSHIRE
THAD COCHRAN, MISSISSIPPI
THOMAS F. EAGLETON, MISSOURI
LAWTON CHILES, FLORIDA
SAM NUNN, GEORGIA
JOHN GLENN, OHIO
CARL LEVIN, MICHIGAN
ALBERT GORE, JR., TENNESSEE
FRANKLIN G. POLK, CHIEF COUNSEL AND STAFF DIRECTOR
MARGARET P. CRENSHAW, MINORITY STAFF DIRECTOR

SUBCOMMITTEE:
CHARLES McC. MATHIAS, JR., MARYLAND, CHAIRMAN
WARREN B. RUDMAN, NEW HAMPSHIRE
THOMAS F. EAGLETON, MISSOURI
[illegible] STAFF DIRECTOR
[illegible] CHIEF COUNSEL
[illegible] CHIEF CLERK

United States Senate

COMMITTEE ON
GOVERNMENTAL AFFAIRS
SUBCOMMITTEE ON
GOVERNMENTAL EFFICIENCY AND THE DISTRICT
OF COLUMBIA
WASHINGTON, DC 20510

September 15, 1986

Mr. Kenneth T. Blaylock
President
American Federation of Government Employees
80 F Street NW
Washington, D.C. 20001

Dear Mr. Blaylock:

We are writing with respect to the withdrawal of your proposed testimony before the Committee on Governmental Affairs regarding the nomination of John Agresto for Archivist of the United States.

At the Committee hearing on September 9, we were informally told that the AFGE wished to withdraw its testimony, copies of which had been provided Committee members at its August 13 hearing on this nomination.

The nominee, Mr. Agresto, during his testimony September 9, stated:

> ...I just learned that the American Federation of Government Employees is withdrawing its testimony against me and withdrawing its opposition to my nomination.
>
> On Friday afternoon, I received a call from the head of the local AFGE unit at the union at the Archives asking me if he could come and speak to me. He came and spoke to me. We spoke for about an hour. We talked about a number of things.
>
> He asked if he could go and canvass my employees; if he could talk to women, to

> black women. I gave him free reign to walk around and talk.
>
> He came back that afternoon and said he was satisfied; that, in fact, they were going to withdraw their opposition to my nomination.

We ask that you confirm that you wish to withdraw your testimony and, if so, to explain the reasons for its withdrawal.

Should you wish to withdraw your testimony, we ask that you substantiate and elaborate on the nominee's description of events leading up to the withdrawal. We also ask that the AFGE clarify for the record whether it opposes, favors, or takes no position on this nomination.

We are particularly interested in knowing the circumstances under which the head of the AFGE local at the Archives came to telephone the nominee; whether anyone contacted the head of the local to suggest that he speak with the nominee, with employees of the National Endowment for the Humanities, or otherwise tried to influence him to change the position of the AFGE.

We would like to know what issues were discussed between the nominee and the head of the local; what assurances or requests may have been made by either person; the titles of persons to whom the head of the local spoke at NEH and the nature of the inquiry.

Lastly, we ask that you point out any inaccuracies in your August 13 testimony, which may have led up to a decision to withdraw the testimony.

Thank you for your attention to this request.

Sincerely,

Tom E.

Thomas F. Eagleton
United States Senator

Charles McC. Mathias, Jr.
United States Senator

AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES
AFFILIATED WITH THE AFL-CIO

KENNETH T. BLAYLOCK
National President

JOHN N. STURDIVANT
Executive Vice President

NICHOLAS J. NOLAN
National Sec-Treas.

80 F STREET, N.W. WASHINGTON, D.C. 20001
Telephone (202) 737-8700

IN REPLY PLEASE REFER TO:

Rf/Agresto

September 24, 1986

The Honorable Charles McC. Mathias, Jr.
The Honorable Thomas F. Eagleton
Senate Committee on Government Affairs
Subcommittee on Governmental Efficiency
  and the District of Columbia
Washington, D.C. 20510

Dear Senators Mathias and Eagleton:

Thank you for your letter of September 15, 1986 requesting clarification on our position on the John Agresto nomination. We withdrew our testimony at the request of AFGE's Local President at the National Archives, Calvin Jefferson. Mr. Jefferson also serves as the President of the AFGE Archives Council of Locals.

It is my understanding that Calvin Jefferson initiated the meeting with Mr. Agresto. Mr. Agresto's discription of the meeting is accurate according to Mr. Jefferson.

Of course, local leaders do not set policy for the national union. However, we weigh local leadership's opinions very heavily in situations such as these. Therefore, when Mr. Jefferson stated he felt he could work with Mr. Agresto to solve ongoing labor-management problems at the Archives, he requested that we withdraw our testimony. We agreed to do so.

From the perspective of the AFGE National Office, while we withdrew our statement, it was not due to inaccuracies in the statement. AFGE National takes no position on this nomination.

Sincerely,

K. T. Blaylock

Kenneth T. Blaylock
National President

GSA response to AFGE complaint
concerning equal employment opportunities for minorities and
women in entry level Archivist
positions; June 6, 1977

Exhibit 30a

JUN 6 1977

Mr. Carmen R. Delle Donne
President, American Federation of
Government Employees (AFGE) Local 2578
National Archives Building
Washington, DC 20408

Dear Mr. Delle Donne:

Pursuant to the Federal Personnel Manual, Section 713.251, I am prepared to render the final agency decision on the third-party discrimination complaint, based on race and sex, filed against the National Archives and Records Service (NARS).

The investigative report on the third-party complaint filed on April 1, 1975, has been thoroughly analyzed. The agency finds that NARS has developed and promulgated policies and practices which have had the tendency to inhibit opportunities for minority and female candidates to qualify for entry level Archivist, GS-1420, positions.

The following analysis addresses the four issues in the complaint:

Issue No. 1

> "The NARS imposed policy of not hiring at the GS-5 level for entry positions into the Archivist Series, GS-1420, has a discriminatory effect on minorities and women."

With regard to this issue, I have considered the statistical data contained in the report. The statistics provided in the Department of Health, Education, and Welfare publications Racial and Ethnic Enrollment Data From Institutions of Higher Education (Tab M of the report) and Earned Degrees Conferred 1971-1972, and summarized in the findings of the report show the following distributions among women, minorities, and white males for enrollment and degrees conferred:

Minority and White Enrollment, Undergraduate and Graduate Programs

	% of Minority	% of White	Ratio
Enrollment in undergraduate programs	12.3	87.6	7.1 to 1
Enrollment in graduate programs	9.1	90.8	9.9 to 1

Men vs. Women, Earned Degrees

	% Women	% Men	Ratio
Bachelor's Degree	43.7	53.3	1.2 to 1
Master's Degree	40.6	59.4	1.4 to 1

Men vs. Women, Earned Degrees in History*

	% Women	% Men	Ratio
Bachelor's Degree	34.4	65.6	(1.9 to 1)
Master's Degree	32.5	67.5	(2.0 to 1)

* The primary discipline of GS-1420 Archivists

These statistics do demonstrate that the additional educational requirement of 1 year of graduate school lessens, to some extent, the number of women and minorities eligible for such positions. The percentage of blacks eligible as compared to whites is reduced from a ratio of approximately 7.1 to 1 to 9.9 to 1. The change in the ratio of women eligible as compared to men, especially those with backgrounds in history, does not appear to be as significant.

The NARS Work Force Analysis by Occupation as of December 3, 1974 (Tab P in the investigative report) for the Social Scientist Category (Archivist 1420 series) reflects a balanced work force among both black and white men and women. The pertinent excerpt from the report is duplicated below:

	Black		White	
	Men	Women	Men	Women
*Should have	5	3	115	29
Have	5	5	119	32
Over or Under	-	+2	+4	+3

*In accordance with the guidelines provided by the Office of Civil Rights

The statistics indicate that for the period under consideration for purposes of this complaint and investigation, the NARS work force was balanced relative to representation in the available work force. The findings of the report do not demonstrate that substantially fewer women and minorities are able to meet the higher educational requirement, nor do they demonstrate that the requirement disproportionately restricts the number of women and minorities hired into the 1420 series.

Since NARS employs approximately 90 percent of GS-1420 and GS-1421 series employees of the U.S. Government, the educational level required for archival positions in the Albert F. Simpson Historical Research Center does not appear to support any conclusion other than the fact that the educational requirements for 1420 positions may vary from institution to institution depending upon the nature of the record holdings and organization of the work involved. The statistics do not support a conclusion that additional educational requirements are not justifiable in other archival institutions.

The fact that 12 archivists in the Presidential Libraries lack the additional year of academic training and are still employed does not entirely refute the claim that an additional year of academic training is essential to the performance of duties for positions in the Office of the National Archives and/or those positions located in the Washington area. It does, however, point to the need for a reexamination of the need for uniform application of the policy in all NARS repositories. This question should be addressed as part of a validation study to determine whether the additional educational requirement is related to and justified by the requirements of archival positions in NARS, generally, and the necessity for uniform application in all NARS facilities, specifically. This validation study and other actions are outlined at the conclusion of this decision.

Issue No. 2

> "Unwarranted barriers exist for the upward mobility of minorities and women in the Archives Technician series GS-1421, because of NARS policy of never crediting technician experience toward qualification for the professional series, even though Civil Service Commission regulations provide a means for this."

Civil Service Commission (CSC) regulations provide for technician experience to be accepted as equivalent to the professional experience required for the same grade, when certain conditions are met. According to CSC the qualification standard for archivist provides alternative ways of qualifying applicants at the GS-5 level, one of which is based on experience in combination with education. CSC further states, "We interpret the intent of the standard as permitting appropriate archives technician experience to be used to meet part of the GS-5 requirements." The NARS position, concerning crediting technician experience in the 1421 series toward qualification in the 1420 series, is that 1421 archives technicians engage in limited archival work experiences, and that their duties and degree of responsibilities are not sufficiently similar to 1420 archivists. It is clearly recognized that NARS would be able to strengthen its upward mobility posture by appropriate renewed use of the Archives Specialist Series and by providing an opportunity for technicians who meet the minimum education requirements to compete for a set-aside number of archival training positions. Entry into the training program will be at the GS-5 level under a 3-year program leading to the full performance level of GS-11. To resolve the problem identified by this issue I have directed accomplishment of several action items specified in the conclusion of this letter which will significantly expand upward mobility opportunities in NARS.

Issue No. 3

> "NARS is inconsistent with regard to its policy of entrance into the 1420 series."

In the Office of the National Archives there were no employees hired after 1967 when the establishment of the entry level position at the GS-7 level became effective who did not meet the requirement of one full year of graduate study. In the Presidential Libraries there are seven employees who entered the 1420 series after 1967 who had less than 1 year of graduate education. Two of these employees, at the Hoover Library, entered the 1420 series at the GS-7 level through the crediting of technician experience (Issue No. 2, above), the remainder were hired at the GS-5 level.

While this lack of consistency in the application of the GS-7 entry level policy may demonstrate the need for a reexamination of the policy and/or the need for ensuring adherence nationwide, exceptions to the policy do not demonstrate that the policy itself has resulted in systemic discrimination. The exceptions and the presumed satisfactory performance of the incumbents do point to the need for a further evaluation of the need for uniform application of the policy throughout NARS. The validation study will address this question.

Issue No. 4

> "NARS management has a history of developing affirmative action plans lacking in specificity with regard to goals and timetables and lacking in relevancy to the union."

This fourth issue involving union participation in the assessment or development of the NARS Affirmative Action Plan (AAP) and subsequently the lack of specificity of the AAP with regard to goals and timetables was explained by the Investigator to not be an appropriate issue for a third-party investigation, but should be pursued through the collective bargaining agreement between the union and management. The agency agrees with the Investigator's determination that this issue was inappropriate for inclusion in a third-party complaint.

In conclusion it is recognized that the NARS policy of hiring at the GS-7 rather than GS-5 level has the effect of reducing the number of women and minorities eligible for 1420 positions. Further, the apparent lack of similarity between the duties of technicians and archivists combined with a GS-6 journeyman level for the archives technician series makes it difficult for technicians to qualify for archivist positions and therefore limits upward mobility opportunities for these employees. This situation places a special responsibility upon NARS to ensure that upward mobility opportunities for technicians are provided. It is also recognized that the EEO and affirmative action efforts should not be restricted to the limited goal of a balanced work force and additional efforts to enhance the opportunities for women and minorities should be actively pursued.

In view of the above, NARS has been directed to take the following actions to ensure that its requirement for 1 year of graduate study is justified by the duties of the position, to enhance upward mobility opportunities for technicians, and to ensure that the policy of hiring at the GS-7 rather than

GS-5 level, if continued, is accomplished with positive affirmative action efforts. Quarterly reports beginning with the quarter ending September 30, 1977, which reflect the status of action item implementation will be submitted to the Director of EEO.

Required Actions

1. A validation study will be conducted jointly by the Office of Personnel and NARS to determine whether the requirement for an additional year of graduate education is necessary and job related for entry into all 1420 positions. The requirements of the positions should be separately analyzed for any specialized areas of archival work and for positions in different NARS repositories.

2. Opportunity shall be provided under the provisions of the Career Intern Development System (OAD P 3610.16), for technicians, who meet the minimal educational and experience requirements for inservice placement, to compete for a set-aside number of archival training positions.

3. A waiver shall be requested from CSC to expand the provisions of the Cooperative Education Employment Program to graduate students who, upon completion of their 30 hours of graduate work, can be assigned to GS-7 archivist positions. Efforts under this program will be aimed at schools with a predominately minority enrollment.

4. Renewed use of the Archivist Specialist series (1421) in the Office of the National Archives and Office of Presidential Libraries will be implemented. Positions requiring a specialized subject matter knowledge or technical expertise or knowledge in one or more of the archival functional areas, but which do not require the breadth of historical knowledge or of archival science required by the 1420 series, will appropriately be classified in this series. Since the series has no positive educational requirement yet provides for coverage at the GS-9 and above level, its use will greatly enhance the career opportunities for NARS technicians. The Office of Personnel and NARS will develop classification guidelines to be used in the evaluation of appropriate positions in the two offices.

5. Affirmative action goals for FY 78 must reflect these specific problem areas and the above action items.

If this decision is unacceptable to you, you may request a review of the decision by CSC, provided your request is made within 30 calendar days of your receipt of this letter. Your request should be in writing, to the Director, Bureau of Personnel Management Evaluation, U.S. Civil Service Commission, Washington, DC 20415.

Sincerely,

[Signed] Paul S. Carter

PAUL S. CARTER
Acting Director of Administration

cc:
Official file (BPA) ✓
Director of Administration (B)
Director of EEO (BP)
Asst. Gen. Cal., Admin. & Records Div. (LR)
Dir., Manpower Mgt. Div. (BPE)
Reading file (BPA)

BPA:SWaters:rmm 8-20-76
Retyped/bsb 10-23-76
Retyped/rmm 11-3-76
Retyped/wjj-bsb 4-6-77
Rewritten:BP:JRHankard:fgw [illegible]4-77 x60398

4 [illegible]

LR [illegible] 5/25

Jan – Note paper clips per [illegible] [illegible]
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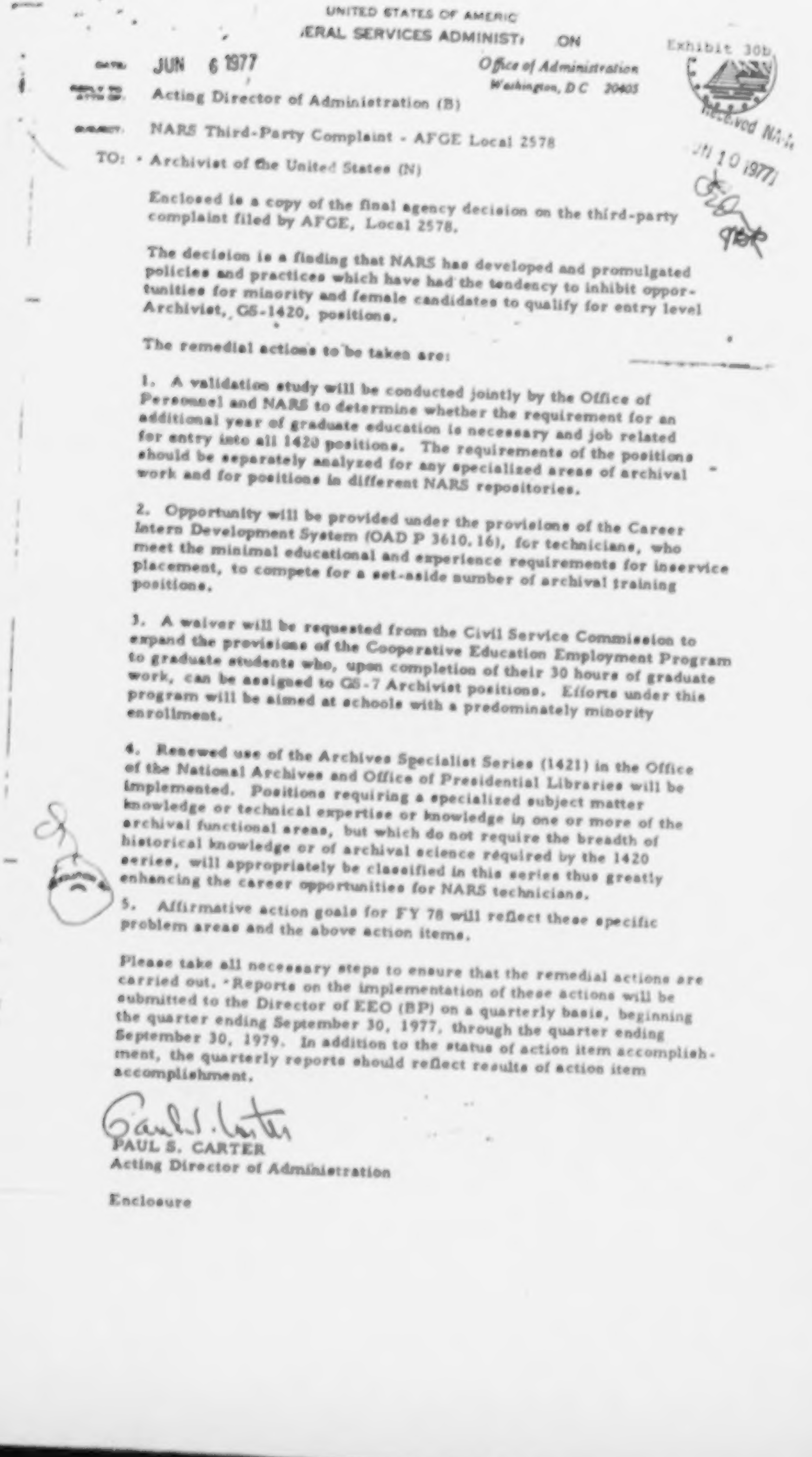
GSA instructions to Archivist concerning remedial actions to be taken to improve hiring and promotion opportunities for minorities and women in entry-level Archivist positions; June 6, 1977



UNITED STATES OF AMERIC
ERAL SERVICES ADMINIST ON

Exhibit 30b

Received NA

JUN 10 1977

Office of Administration
Washington, D C 20405

DATE: JUN 6 1977

REPLY TO ATTN OF: Acting Director of Administration (B)

SUBJECT: NARS Third-Party Complaint - AFGE Local 2578

TO: Archivist of the United States (N)

Enclosed is a copy of the final agency decision on the third-party complaint filed by AFGE, Local 2578.

The decision is a finding that NARS has developed and promulgated policies and practices which have had the tendency to inhibit opportunities for minority and female candidates to qualify for entry level Archivist, GS-1420, positions.

The remedial actions to be taken are:

1. A validation study will be conducted jointly by the Office of Personnel and NARS to determine whether the requirement for an additional year of graduate education is necessary and job related for entry into all 1420 positions. The requirements of the positions should be separately analyzed for any specialized areas of archival work and for positions in different NARS repositories.

2. Opportunity will be provided under the provisions of the Career Intern Development System (OAD P 3610.16), for technicians, who meet the minimal educational and experience requirements for inservice placement, to compete for a set-aside number of archival training positions.

3. A waiver will be requested from the Civil Service Commission to expand the provisions of the Cooperative Education Employment Program to graduate students who, upon completion of their 30 hours of graduate work, can be assigned to GS-7 Archivist positions. Efforts under this program will be aimed at schools with a predominately minority enrollment.

4. Renewed use of the Archives Specialist Series (1421) in the Office of the National Archives and Office of Presidential Libraries will be implemented. Positions requiring a specialized subject matter knowledge or technical expertise or knowledge in one or more of the archival functional areas, but which do not require the breadth of historical knowledge or of archival science required by the 1420 series, will appropriately be classified in this series thus greatly enhancing the career opportunities for NARS technicians.

5. Affirmative action goals for FY 78 will reflect these specific problem areas and the above action items.

Please take all necessary steps to ensure that the remedial actions are carried out. Reports on the implementation of these actions will be submitted to the Director of EEO (BP) on a quarterly basis, beginning the quarter ending September 30, 1977, through the quarter ending September 30, 1979. In addition to the status of action item accomplishment, the quarterly reports should reflect results of action item accomplishment.

Paul S. Carter
PAUL S. CARTER
Acting Director of Administration

Enclosure

U.S. Civil Service Comm. requiring Archives policy change and study to promote entry of minorities and women into entry-level Archivist positions; May 9,1978

Exhibit 30c

UNITED STATES CIVIL SERVICE COMMISSION
BUREAU OF PERSONNEL MANAGEMENT EVALUATION
WASHINGTON, D.C. 20415

IN REPLY PLEASE REFER TO

PMV:EPS
772927
YOUR REFERENCE

MAY 9 1978

Ms. Janice Mendenhall
Director of Administration
General Services Administration
Room 3140, GSA Building
Washington, D. C. 20405

Dear Ms. Mendenhall:

We have completed our review of the GSA investigation and decision regarding the American Federation of Government Employees (AFGE) third party complaint of discrimination filed April 1, 1975 against the National Archives and Records Service (NARS) central office in Washington, D. C. The enclosed letter and attachment to Mr. Carmen R. Delle Donne, President, AFGE Local 2578, describe our approach in reviewing this complaint and our findings. The GSA investigative report was factual and clearly written, so that we have an adequate basis from which to draw our conclusions. However, we find no justification for the two-year delay between the time the investigation was completed and the time the agency decision was rendered.

Although we find no deliberate discrimination by NARS against minorities and women in the employment of Archivists, we must conclude that the NARS policy of raising the entry level for the Archivist Series, GS-1420, from grade GS-5 to grade GS-7, and the practice at the Office of National Archives (ONA) since 1967 of selecting for Archivist positions only candidates with one year of graduate school, have the effect of excluding a greater proportion of potential minority and female candidates from consideration for Archivist positions than they do potential non-minority and male candidates. Therefore, we are requiring that you have NARS discontinue this policy and practice until the job analysis study referred to in the decision letter can be completed to determine whether they are justified in terms of actual job requirements. Such an analysis is in accordance with the basic requirements of Part 300, Subpart A, Section 300.103, of the Commission's regulations. Please submit to us within 30 days documentation showing that the above-mentioned policy and practice have been discontinued, pending completion of the required study, and an action plan and timetable on how you expect the study to proceed. In developing the study, we strongly urge you to work with Ms. Alta M. Brenner, Occupational Specialist, Social Science and Information Occupations Section, Standards Division, Bureau of Policies and Standards, U. S. Civil Service Commission. Ms. Brenner can be reached on 632-5632.

In addition, please include in the study analysis and conclusions on whether there is a job-related basis for systematically excluding all Archives Technician experience obtained at ONA from qualification for Archivist positions, and whether there is a job-related basis for the practice of making exceptions to the GS-7 Archivist entry level policy at locations outside Washington, D. C. but not at ONA in Washington, D. C. When the study is completed, please have NARS revise its Archivist employment policy and practices in accordance with your findings. Pending completion of this study, NARS must evaluate the experience of each ONA Archives Technician applying for an Archivist position on a case-by-case basis to determine whether part or all of his or her Technician experience is qualifying for Archivist. Civil Service Handbook X-118, Part II, page 11 "Evaluation of Technician Experience for Professional Positions" is the qualification guide for these cases.

When the job analysis study is completed, please furnish us a summary of the analysis and conclusions and a copy of any resulting revisions in NARS policies and practices.

Finally, to help overcome past effects of the policy and practices discussed above, we strongly recommend that NARS implement the affirmative actions required by GSA in its letter of decision dated June 6, 1977, and that these actions be included in the next equal employment opportunity affirmative action plan.

Sincerely yours,

John D. R. Cole
Director

Enclosure

cc: Carmen R. Delle Donne, President
AFGE Local 2578

Director, Office of Federal Equal
Employment Opportunity
U. S. Civil Service Commission

Alta M. Brenner, Room 3334
Standards Division
U. S. Civil Service Commission

U.S. Civil Service Comm. ltr
to AFGE on its findings and in-
structions to Archives on entry-
level Archivist positions; 5/3/78

Exhibit 30d

UNITED STATES CIVIL SERVICE COMMISSION
BUREAU OF PERSONNEL MANAGEMENT EVALUATION
WASHINGTON, D.C. 20415

IN REPLY PLEASE REFER TO
PMV:ERS
772887
YOUR REFERENCE

MAY 3 1978

Mr. Carmen R. Delle Donne
President, Local 2578
American Federation of Government
Employees (AFGE)
National Archives Building
Washington, D. C. 20408

Dear Mr. Delle Donne:

We completed our review of the investigation and decision by General Services Administration (GSA) on the AFGE third party discrimination complaint brought against the National Archives and Records Service (NARS) central office in Washington, D. C. The complaint involves allegations of discrimination by NARS against all minorities (with particular emphasis on Blacks) and women in the employment of Archivists, GS-1420 series, in Washington, D. C.

The GSA investigative report indicates that almost all the NARS Archivists (as well as Archives Technicians which figure prominently in the complaint) in the Washington, D.C. area are located in the Office of National Archives (ONA). Therefore, our analysis is primarily concerned with the employment situation at ONA.

Our analysis proceeds in the same format as the investigation and decision, considering each of the four allegations in turn. We understand that AFGE agreed to define the complaint in terms of these four allegations. Our analysis considers the GSA investigative report of August 8, 1975; the GSA letter of decision of June 6, 1977; the complainants letter of July 5, 1977, requesting that the Civil Service Commission review the decision; and additional statistics obtained by our office.

We find no deliberate discrimination by NARS against minorities and women in the employment of Archivists. In fact, the representation of minorities and women in the Archivist Series is equal to, or greater than, the representation of minorities and women in social science occupations in the U.S. labor force, based on the latest reliable census data (1970).

THE MERIT SYSTEM—A GOOD INVESTMENT IN GOOD GOVERNMENT

Nevertheless, the NARS policy of raising the entry level of the Archivist Series, GS-1420, from grade GS-5 to grade GS-7, and the practice at ONA since 1967 of selecting for Archivist positions only candidates with one year of graduate study, have the effect of excluding a greater proportion of potential minority and female candidates from consideration for Archivist than they do potential non-minority and male candidates. Therefore, we are requiring NARS to discontinue this policy and practice until it can complete the job analysis study referred to in the GSA decision letter to determine whether they are justified in terms of actual job requirements. We are also asking NARS to include in its job analysis a study of the basis for not crediting any ONA Archives Technician experience for Archivist positions, and the basis for differential application of the GS-7 Archivist entry level policy at different locations. We will be reviewing the conclusions of the study and the resulting revisions of NARS policy and practice.

In addition, to help overcome the past effects of NARS policy and practice, we are strongly recommending that NARS implement the affirmative actions required by GSA in its decision letter of June 6, 1977, and that these actions be included in the next equal employment opportunity affirmative action plan.

Sincerely yours,

John D. R. Cole

John D. R. Cole
Director

Enclosures

cc: Ms. Janice Mendenhall
Director of Administration
General Services Administration

Director, Office of Federal Equal
Employment Opportunity
U.S. Civil Service Commission

Alta M. Brenner
Standards Division
U.S. Civil Service Commission

Chart 1

Comparison of Eligibility for Archivist of Various Groups Based on Potentially Qualifying Education

Grade and Basis for Eligibility at each Grade	Percentage Eligible				Ratio of Percentages
	Women	Men	Minority	Non-Minority	
Inside ONA:					
Archives Technicians					
GS-5 (Bachelor's Degree)	36.7	43.2			1:1.2
GS-7 (B.A. + 1 year or more graduate work)	2.0	9.0			1:4.5
GS-5 (Bachelor's Degree)			12.8	64.7	1:5
GS-7 (B.A. + 1 year or more graduate work)			2.5	12.5	1:5
Outside ONA:					
U. S. College Enrollment					
GS-5 (undergraduates)			12.3	87.6	1:7.1
GS-7 (graduates)			9.1	90.8	1:9.9
Earned Degrees in U. S.					
GS-5 (Bachelors)	43.7	53.3			1:1.2
GS-7 (Masters)	40.6	59.4			1:1.4
Earned History Degrees in U. S.					
GS-5 (Bachelors)	34.4	65.6			1:1.9
GS-7 (Masters)	32.5	67.5			1:2.0

Attachment

Allegation 1: "The NARS imposed policy of not hiring at the GS-5 level for entry positions into the Archivist Series, GS-1420, has a discriminatory effect on minorities and women."

Analysis 1: We find no evidence that NARS is deliberately discriminating against minorities and women who are not qualified above the GS-5 level for Archivist positions. In fact, NARS has long had a practice of paying for part of the coursework taken by Archives Technicians at educational institutions to qualify for Archivist positions above grade GS-5.

Further, we cannot find discriminatory impact in terms of representation of minorities and women in the Office of National Archives (ONA) in Washington, D. C. compared to representation of these groups in the qualified relevant labor market, a standard of comparison set forth in both the U. S. Supreme Court decision of Hazelwood School District et al v. U.S. of June 27, 1977 and the proposed Uniform Guidelines on Employee Selection Procedures (published in The Federal Register December 30, 1977). The GSA letter of decision uses a reasonable measure of the qualified relevant labor market, that is, the number employed or experienced in social science occupations nationwide. The social scientist occupational cluster closely parallels the disciplines required by the Civil Service Commission to qualify for Archivist. The 1970 census data, from which GSA takes its comparative figures, are the most recent reliable statistics the Census Bureau has. Using these statistics, the representation of minorities and women in the NARS Archivist workforce equals or exceeds the representation of these groups in the qualified relevant labor market.

Nevertheless in its decision letter GSA states "that NARS has developed and promulgated policies and practices which have had the tendency to inhibit opportunities for minority and female candidates to qualify for entry level Archivist, GS-1420, positions."

Chart 1 assembles figures presented in the investigative report and letter of decision to show the adverse impact on minorities and women caused by the NARS policy of raising the Archivist entry level from grade GS-5 to grade GS-7, in combination with the practice at ONA since 1967 of selecting for Archivist positions only candidates with at least one year of graduate school. The Chart shows populations from which Archivists are typically recruited and compares the ratio of the percentages of educationally qualified minorities versus non-minorities and educationally qualified women versus men both inside and outside ONA. (The measure of "ratio of percentages" is in accordance with the formula for measuring adverse impact as described in the Federal Executive Agency Guideline on Employee Selection Procedures and the proposed Uniform Guidelines on Employee Selection Procedures.) The net result is that in all but one comparison in Chart 1 the ratio of eligible minorities to non-minorities and eligible women to men is reduced when the Archivist entry level is raised from grade GS-5 to grade GS-7, as practiced at ONA. Of the five ratio comparisons on the Chart, one shows that the NARS policy of raising the Archivist entry level does not impact minorities either favorably or unfavorably (because the ratio doesn't change*); whereas, the other comparative ratios show that the impact of this policy on minorities and women ranges from slightly to strongly adverse.

The NARS entry level policy must be further questioned in that there is no indication that it is based on sound job analysis. Without such analysis there is no assurance that the policy and practice are related to the requirements of the job. In effect, the policy raises the minimum qualification standards prescribed by the Civil Service Commission, without Commission approval. Finally, the Archivist Training Agreement, on which NARS bases part of its justification for the GS-7 entry level, expired July 29, 1973, and, even when it was active, was not supported by job-relatedness analysis.

Allegation 2: "Unwarranted barriers exist for the upward mobility of minorities and women in the Archives Technician series, GS-1421, because of the NARS policy of never crediting technician experience toward qualification for the professional series, even though Civil Service Commission regulations provide a means for this."

Analysis 2: None of the ONA employees who entered the GS-1420 series since 1967 qualified on the basis of Archives Technician experience. This indicates that the agency is systematically discounting Technician experience for meeting the Archivist qualification requirement, even though Civil Service Commission qualifications standards allow for crediting Technician experience under certain conditions. This practice presents an upward mobility barrier for Technicians, 46.3% of whom are minorities and 38.7% of whom are women.

---

* The fact that the ratio does not change in this comparison is somewhat misleading; it should be pointed out that the NARS hiring policy results in exclusion from consideration for Archivist 36 female Archives Technicians (36.8% of all female Technicians at ONA) and 15 minorities (12.8% of all minority Technicians at ONA) who qualify for Archivist, GS-5, on the basis of a Bachelor's Degree but do not have the additional year of graduate school to qualify for Archivist, GS-7.

There is no indication that NARS has made a study to determine whether some Technician experience obtained at ONA may be sufficiently related to the ONA Archivist positions to be considered qualifying for these positions. In the absence of such a study NARS cannot be assured that the practice of excluding Technician experience to qualify for Archivist positions is job-related and does not unnecessarily discriminate against the high proportion of minorities and women among its Technicians.

Allegation 3: "NARS is inconsistent with regard to its policy of entrance into the 1420 series."

Analysis 3: Strictly speaking, this charge is not an allegation of discrimination based on one of the areas within the purview of a third party equal employment opportunity discrimination complaint.

Nevertheless, this charge is related to previous allegations. The investigative report identifies 15 Archivists outside the Washington, D. C. area who entered the GS-1420 series without the year of graduate school, which NARS says is essential for all Archivists and, therefore, justifies the policy of setting the Archivist entry level at GS-7. Some of the 15 entered Archivist positions at the GS-5 level and some at the GS-7 level; some entered partly on the basis of Technician experience. NARS suggests that the exceptions to the policy in locations outside Washington, D. C. may indicate that the job requirements are different for Archivists in D. C. compared to those in other locations. However, the agency never says what those differences are. Neither is there any indication of any job analysis which would support the differential Archivists employment practices at different locations.

Allegation 4: "NARS management has a history of developing affirmative action plans lacking in specificity with regard to goals and timetables and lacking in relevancy to the union."

Analysis 4: This allegation is a difference of opinion on the methods for taking affirmative action. As such, it is not strictly an allegation of discrimination within the purview of a third party discrimination complaint.

AFGE request to Civil Service
Comm. for investigation of Ar-
chives compliance with CSC May 3,
1978 order; 11/7/78

[illegible]
[illegible]ONAL ARCHIVES BLDG., RM. 2E
WASHINGTON, D. C. 20408

November 7, 1978

Mr. John D. R. Cole
Director
Bureau of Personnel Management Evaluation
U.S. Civil Service Commission
Washington DC 20415

Re: PMV:ERS
772887

Dear Mr. Cole:

We hereby request an investigation into the cited case on the grounds that the Archives is subverting the decision of the Commission and thwarting the efforts of the Local to be involved in the validation study.

Pursuant to your order of May 3, the Archives has hired three persons into the archivist series at the level of GS-5 because of the unwarrented barriers created by a policy of hiring only at GS-7 or above. The selections raise questions of whether the Archives is subverting your order in that two of the three were white males and all have graduate training approximating the Masters degree. This of course does not help the upward mobility of our employees who qualify at GS-5 but are not preferred. And it cheats the selectees who should be hired at GS_7.

A major portion of your order was to hire Archives specialists 1421 where the definition of specialist would be subject specialisation with the records, thus providing upward mobility at grades above GS-7 for technicians. The Archives has made no move on this remedy.

Finally, your order demanded a validation study of the 1420 series to see if graduate study in US history amounting to 30 hours is essential to the performance of the work of archivist. We have requested the opportunity to participate in this study, to comment, to be present and have input and we have not received an answer.-- but the answer is no.

We are going to take this case to court if we don't get some releef.

Sincerely,

Carmen R. Delle Donne

CArmen R. Delle Donne
President

347-4005

cc: Janice Mendenhall, Director of Administration, GSA
Office of Federal Equal Employment Opportunity, CSC
Alta Brenner, Standards Division, CSC

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

DIVISION OF FINANCIAL AND
GENERAL MANAGEMENT STUDIES

FEBRUARY 11, 1980

B-196872

The Honorable Charles McC. Mathias, Jr.
United States Senate

Dear Senator Mathias:

Subject: Problems in Archives Personnel Practices (FGMSD-80-29)

Your inquiry of August 28, 1979, asked for our findings and views on a constituent's allegation of unfair treatment in terms of promotions and assignments at the National Archives and Records Service (NARS). The constituent attributes the alleged unfair treatment to a "buddy system" in his branch of NARS which operates under the National Archives Trust Fund. Specific complaints, such as this, are normally handled through the Office of Personnel Management (OPM) or the Merit Systems Protection Board, and as discussed with your office, it is not appropriate for the General Accounting Office to become involved in this case. However, we would like to comment on some of the practices at NARS regarding the hiring and utilization of employees.

The National Archives Trust Fund was created by statute in 1941 primarily to handle gifts and bequests for the general benefit of the National Archives. In 1948, the law was amended to authorize the Archivist to charge for reproductions of archival records and materials and deposit the fees in the trust fund. The authorizing legislation also grants the National Archives Trust Fund Board the authority to hire necessary employees without regard to civil service laws and requires these trust fund employees to be paid with trust fund monies. The legislative history shows that this direct hire authority for trust fund employees was granted so that highly qualified technical persons could be hired for short periods of time.

We believe that this legislative intent is not being followed because most of the approximately 240 people now employed by the trust fund are full-time employees who hold positions not requiring special skills or knowledge. For

(905012)

example, many trust fund employees hold administrative, clerical, or technical positions not specifically related to archival matters but which can be found in most Government agencies. Also, we found employees who held trust fund positions and later held the same or very similar positions under competitive appointments. This indicates that specialized skills and knowledge were not prerequisites for the trust fund position. Finally, the fact that we found people employed by the trust fund as long as 13 years shows they were not employed on a temporary basis.

OPM regulations preclude assigning people with excepted appointments (like trust fund employees) to the work of positions in the competitive service without OPM's prior approval. Due to an intermixture of trust fund and appropriated activities at NARS, numerous employees, both excepted and competitive service, have split duties--working partly on trust fund projects and partly on appropriated activities. In some cases, trust fund employees supervise competitive service employees, and vice versa, without the required OPM approval. An internal NARS report confirms that the requirement for prior OPM approval has been violated repeatedly.

We were asked earlier by the Chairman of the House Subcommittee on Government Information and Individual Rights, who has oversight responsibility for NARS, to review the operation of the National Archives Trust Fund. During our review we found 43 employees who were paid sometimes from appropriated monies and sometimes from trust funds during the 2-year period we examined. Some were originally hired and paid under the trust fund's direct hire authority and then later paid with appropriated monies. Others were originally paid from appropriated funds and later with trust funds. (However, none was paid from both funds for the same pay period.) Eight of the 43 employees were transferred, for pay purposes, from one fund to the other more than once. Although we did not question whether these employees obtained the proper competitive status before being paid with appropriated funds, we believe this practice of transferring employees gives NARS the opportunity to avoid requirements of the competitive service.

Many trust fund employees work side-by-side with employees paid by appropriations and, in some instances, do the same jobs. These conditions, coupled with split duties, mixed supervision, the lack of a trust fund organizational chart, and no written personnel policies for trust fund employees have had a negative impact on employee morale.

We expressed our views and findings on the fund's operation, including the hiring and utilization of trust fund employees, at Subcommittee hearings on June 25 and July 30, 1979. We believe there may no longer be a need for the direct hire authority and at the Subcommittee's direction, we drafted legislation which would eliminate that authority.

NARS, in its testimony before the Subcommittee on September 20, 1979, took issue with our interpretation of the Congress' intent for the direct hire authority. NARS officials said that although they preferred the direct hire authority to continue, the loss of the authority alone would not result in discontinuing activities carried out through the trust fund. In addition, they said that all trust fund positions were being reviewed to ensure that employees had the proper type of appointment and that a manual outlining criteria for direct hire was being developed. The entire trust fund operation was under review by the General Services Administration's inspector general at the time of the September 20 hearings and he testified that, based on his preliminary findings, he basically concurred with our position.

Due to Congressional interest in the National Archives Trust Fund and its operation, it is likely that changes will be forthcoming. We continue to believe that if the direct hire authority is eliminated, many of the current problems will be resolved.

As arranged with your office, we are sending a copy of this letter to the Acting Archivist of the United States. We also will give copies to people who request them.

You furnished us some material that you asked us to return. This material will be sent separately.

Sincerely yours,

D. L. Scantlebury
Director

Office of Personnel Management
Tentative Stds for Archivist;
Archivist Clerk; and Assistant
positions; Nov. 10, 1981

Exhibit 30f

FES
Factor Evaluation System
of Position Classification

Tentative Standards for

- Archivist Series, GS-1420 and Archivist Clerk and Assistant Series, GS-1421 (Class and Qual)

Suggestions for revision are due: • November 10, 1981

This draft of standards is subject to revision before final approval and publication; therefore, it should not be used as a basis for any personnel action. ***No additional copies available; copies may be duplicated if necessary.***

United States
Office of Personnel Management
Standards Development Center
Washington, D.C. 20415

(Archivist Series, cont'd)

instructions for reviewing classification standards written in FES format are contained in the Instructions for the Factor Evaluation System. The grade level criteria proposed for this series describe factor levels needed to classify nonsupervisory positions. The factor level descriptions are necessarily broad to encompass the variety of assignments performed by employees in the series. The illustrations provide examples of factor levels descriptive of positions representing typical work assignments for archivists. The illustrations are provided following Factors 1, 4, and 5 with appropriate cross references under each factor. Can you provide specific suggestions for improving the factor level descriptions? Illustrations? If so, please submit suggested language that will clarify or augment the FLDs or the illustrations.

Qualification Standard

The basic requirements for entry into the series have been modified to align more properly with the requirements of a major course of study in most bachelor programs. We believe that 6 hours in American history and 24 total hours are more realistic then the 18 and 30 hours currently required. Please note that time requirements for grades above GS-5 have been eliminated. We have placed greater emphasis on the quality of a person's experience instead of the length. For GS-9 positions the qualifying master's degree must be in a field directly related to the position being filled. We have also expanded the discussion on selective and quality ranking factors. Specific suggestions for improvement are welcomed.

Archives Clerk and Assistant Series

Series Definition

The revised definition narrows the scope of this series to include those positions directly involved in providing assistance in the performance of archival functions. The work included is of the one-grade interval variety and no longer includes two-grade interval work as covered by the current standard. This latter type of work as described in the present standard is more appropriate to other defined occcupations.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

1985

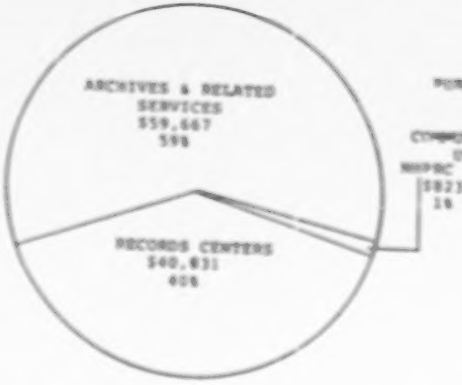
CONGRESSIONAL JUSTIFICATION

ESTIMATES OF APPROPRIATIONS FOR FISCAL YEAR 1987

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

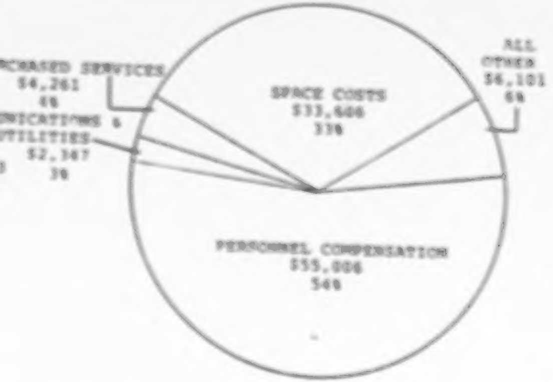
HIGHLIGHTS OF FY 1987 REQUEST

FY 1987 APPROPRIATIONS
COSTS BY PROGRAM AREA



TOTAL: $101,321

FY 1987 APPROPRIATIONS
DISTRIBUTION BY MAJOR COST ELEMENT



TOTAL: $101,321

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Impact of the Balanced Budget and Emergency Deficit Control Act of 1985 - P.L.99-177
(Gramm-Rudman-Hollings Act)
on the FY 1986 Budget

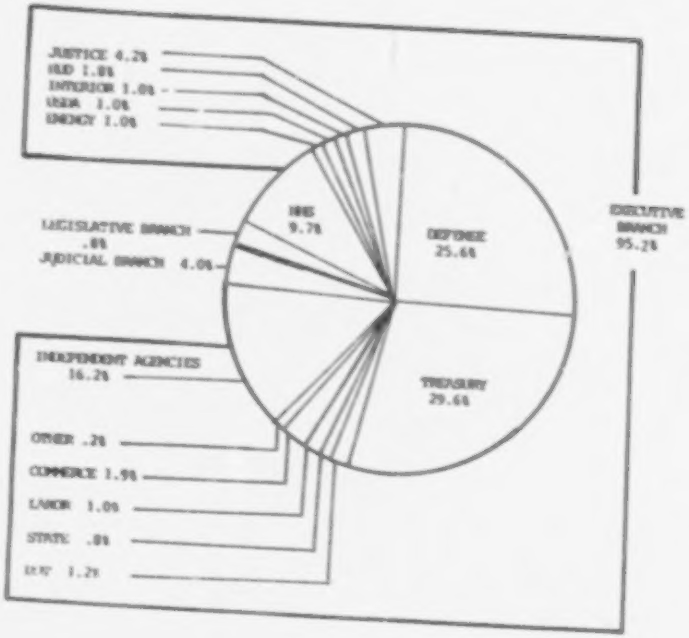
(Dollars in Thousands)

	FY 1986 Level Authorized by Continuing Resolution P.L. 99-190	Reduction Pursuant to P.L. 99-177	Revised FY 1986 Budget Authority	Carry Forward Funding	TOTAL
Operating Expenses (Direct)	$ 97,383	$-4,207	$93,176	$+7,464	$100,640
Grants	4,000	-172	3,828	+105	3,933
TOTAL	$101,383	$-4,379	$97,004	$+7,569	$104,573

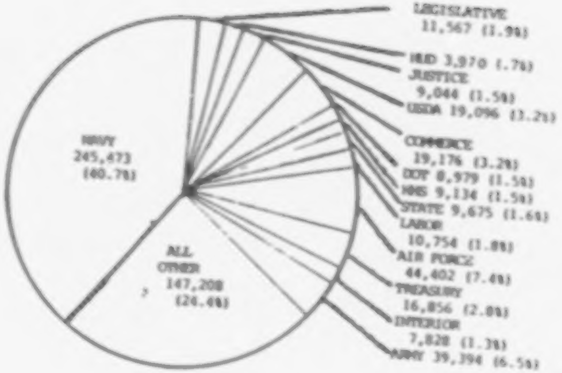
	FY 1986 Estimated Expenses	Reduction Pursuant to P.L. 99-177	FY 1986 Estimated Expenses, Revised
Trust Fund	$ 8,473	$ -330	$ 8,143

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Operating Expenses (Direct)

RECORDS HOLDINGS OF FEDERAL RECORDS CENTERS
AS OF SEPTEMBER 30, 1985



AGENCY HOLDINGS NOT SCHEDULED FOR
DISPOSAL IN THE FEDERAL RECORDS
CENTERS (CUBIC FEET)



TOTAL UNSCHEDULED HOLDINGS: 602,556 CUBIC FEET

Selected library holdings at the close of FY 1985 were as follows: (000)

Pages of manuscripts	199,366
Volumes	239
Other Printed Items	439
Still Pictures	3,401
Museum Objects	194
Motion Picture Film Footage	12,574

Exhibits in Presidential Libraries were viewed by 1,318,142 visitors in FY 1985.

Presidential Libraries Performance Costs	1985 Actual	1986 Estimate	1987 Estimate	Change from 1986
Hoover	$ 477	$ 512	$ 515	$+ 3
Roosevelt	569	611	614	+ 3
Truman	738	792	796	+ 4
Eisenhower	708	760	765	+ 5
Kennedy	870	933	938	+ 5
Johnson	920	988	994	+ 6
Nixon Records	706	758	762	+ 4
Ford	633	680	684	+ 4
Carter Pres. Materials	405	434	1,039	+ 605
White House Liaison	94	102	103	+ 1
Planning & Dir.	899	740	742	+ 2
SLUC/RENT & Recurring Reimb. payments to FBF	553	549	379	- 170
Actual Cost - NARA Bldg.	57	101	98	- 3
Actual Costs - Libraries	6,783	11,520	7,473	-4,047
Common Distributables	224	332	300	- 32
Total Performance Costs	$14,636	$19,812	$16,202	$-3,610
Preservation included above.	(884)	(734)	(734)	(-)

3. Federal Register - This program provides for the editing, compilation, and publication of Federal Regulations in the Federal Register and Code of Federal Regulations, laws in slip law form and in the U.S. Statutes at Large, Presidential documents in the Weekly Compilation of Presidential Documents and Public Papers of the Presidents, a compilation of Privacy Act issuances and statements of federal agency organization and functions in the United States Government Manual.

The program also provides leadership and assistance to agencies in regulation drafting, assists the public through its finding aids program for all its publications and conducts educational programs for the public on how to use the Federal Register.

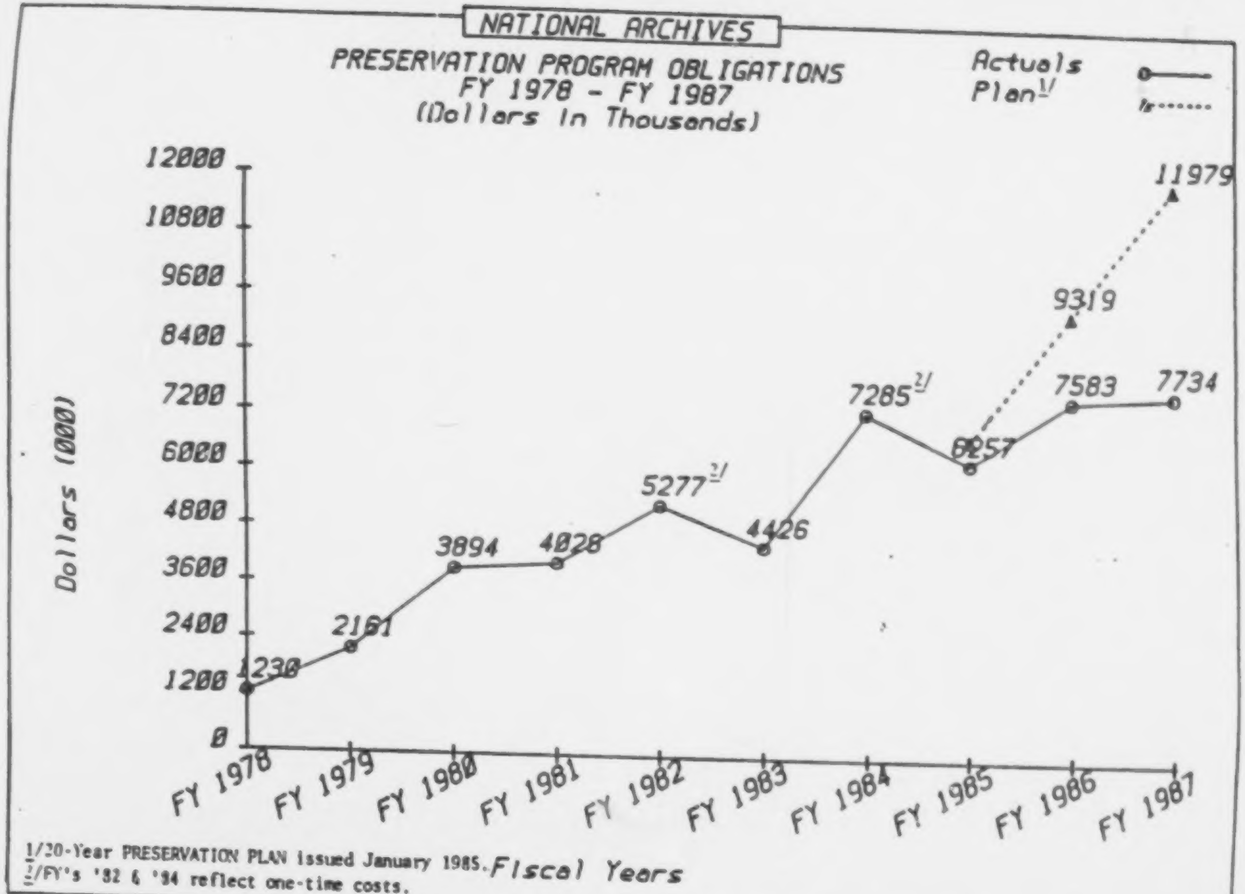
4. Records Declassification - The declassification program makes available to the public more historically valuable information in the records of the federal government and in donated historical materials by declassifying as much information as possible without endangering national security. Most of the work is performed in the Washington metropolitan area on records in the National Archives Building and in the Washington National Records Center. A very small amount of the total workload is accomplished at the Presidential Libraries of recent presidents. The program provides for the systematic review of security classified records which are or will be 30 years old, except for intelligence and cryptological records; the NARA portions of the State Department and AID systematic review projects; the systematic review of OSS records; and the mandatory review of records requested by researchers, in accordance with procedures established under Executive Order 12356 and the Freedom of Information Act.

B. Explanation of Changes, FY 1986 vs FY 1987

Program Changes. Includes increases of $415,000 for preservation and $600,000 for the Carter Library.

Other Changes. Includes increases of $8,000 for recurring reimbursables, $1,070,000 for increased cost of goods and services, $92,000 for operation and maintenance costs of the Archives building, and $1,153,000 for operation and maintenance costs of the Presidential Libraries, including the opening of the Carter Library, and $18,000 for payments to the Federal Buildings Fund (FBF) for RENT changes.

These are offset by decreases of $2,000,000 for FY 1982 supplemental funds carried forward, $5,200,000 for the Kennedy Library project carry forward, $264,000 for preservation of House and Senate records carried forward from FY 1985, $170,000 for productivity improvements, $200,000 for repairs and alterations to the Archives building, and $370,000 for payments to the FBF for RENT changes.



NATIONAL ARCHIVES

PRESERVATION PROGRAM OBLIGATIONS
FY 1978 - FY 1987
(Dollars In Thousands)

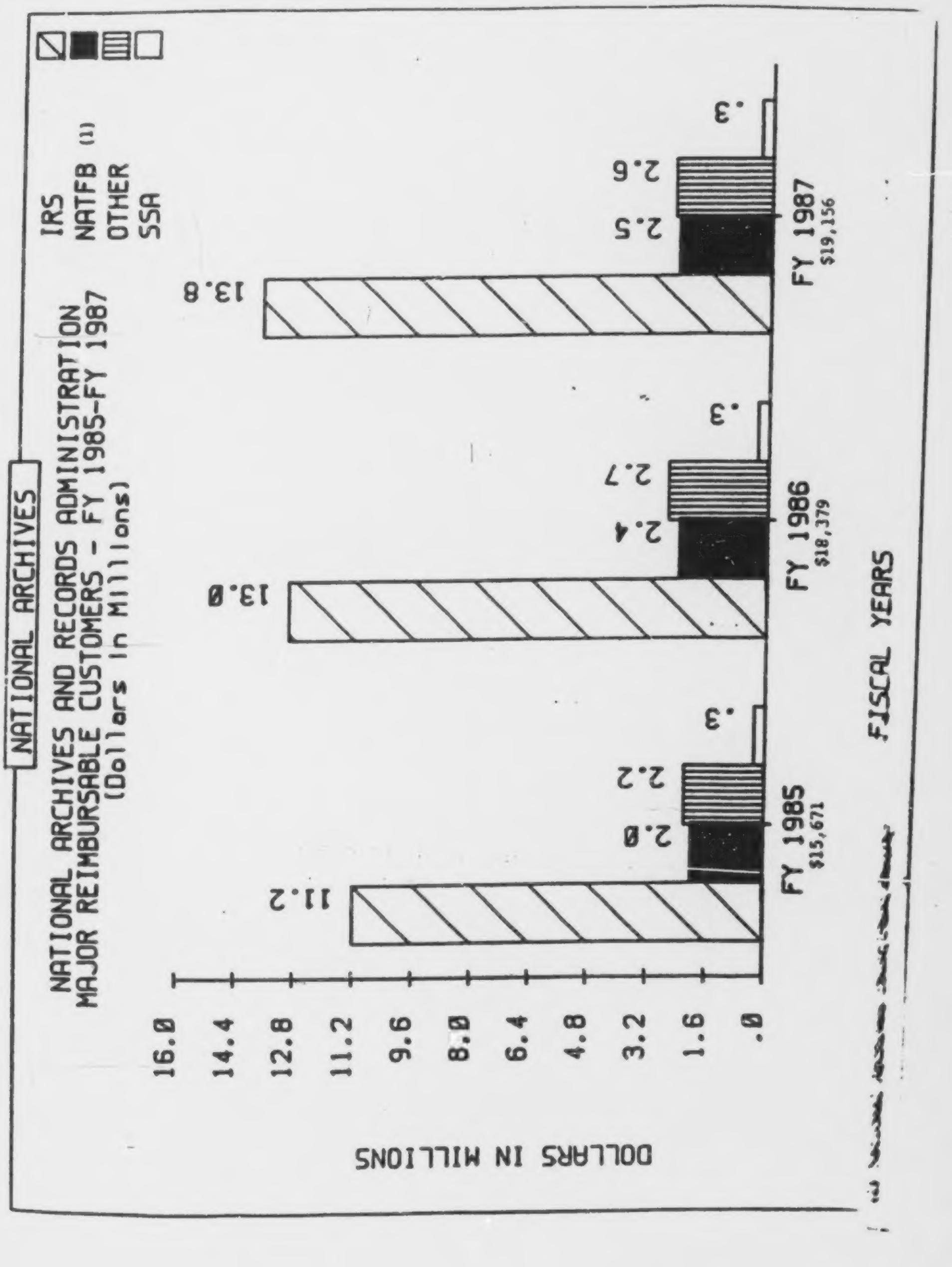
[1] 20-Year PRESERVATION PLAN issued January 1985.

[2] FY's '82 & '84 reflect one-time costs.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Operating Expenses (Direct)

SUMMARY OF EMPLOYMENT
(Number of Workyears)

Principal Categories	1985 Actual	1986 Estimate	1987 Estimate	Changes for 1987		
				Total	Program	Other
Management and Administrative Direction	106	130	130	-	-	-
Professional	449	545	547	+2	+2	-
Technical..............................	702	854	861	+7	+7	-
Clerical...............................	159	193	188	-5	+1	-6
Sub-Total..........................	1,416	1,722	1,726	+4	+10	-6
Part-time & Temporary workyears.........	325	407	385	-22	-	-22
Total..............................	1,741	2,129	2,111	-18	+10	-28


NATIONAL ARCHIVES
NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
MAJOR REIMBURSABLE CUSTOMERS - FY 1985-FY 1987
(Dollars in Millions)
▨ IRS
■ NATFB (1)
▤ OTHER
□ SSA
DOLLARS IN MILLIONS
16.0
14.4
12.8
11.2
9.6
8.0
6.4
4.8
3.2
1.6
.0
11.2
2.0
2.2
.3
FY 1985
$15,671
13.0
2.4
2.7
.3
FY 1986
$18,379
13.8
2.5
2.6
.3
FY 1987
$19,156
FISCAL YEARS
(1)

The National Archives Volunteers

CONSTITUTION STUDY GROUP

In 1987 the nation will celebrate the Bicentennial of the drafting and signing of the Constitution of the United States. In the interest of promoting a better understanding of this event, as well as the Constitution itself, the National Archives Volunteers Association several years ago formed a Constitution Study Group. The purpose is to arrange lectures, seminars, and other special events designed to focus attention on the Constitution and to increase awareness of American citizens of both their rights and their obligations under it.

With the support of the D.C. Community Humanities Council, and other donors, the Constitution Study Group in late 1982 inaugurated a program of monthly lectures on various aspects of the constitutional system. Speakers have included distinguished scholars, journalists, jurists, members of Congress and university professors, and their topics have included such subjects as the First Congress, the First Presidency, the First Supreme Court, the Federalist Papers, Religious Liberty and the possibility of a Second Constitutional Convention. An appropriate, original document from the vast National Archives collection is usually displayed in connection with each lecture, and each lecture is followed by a lively question-and-answer period.

In March 1985 the Constitution Study Group is sponsoring a symposium designed to stimulate preparations for celebrating the Bicentennial in 1987. The theme of the one-day symposium is "The Constitution: Past, Present and Future." Participants include representatives from those organizations that have announced plans for the Bicentennial, and the program consists of discussion panels as well as prominent speakers. The keynote speaker is the eminent political scientist Professor James MacGregor Burns, who is also Co-Chair of Project '87, a joint Bicentennial project of the American Historical Association and the American Political Science Association.

As the permanent home of the original Constitution, as well as the original Bill of Rights (the first ten amendments) and the remaining sixteen amendments to the basic charter, the National Archives is an appropriate setting for the Constitution Study Group. It is also fitting, and in keeping with the spirit of the revolutionary generation that gave us the Constitution, that this program is planned and directed by volunteers - ordinary citizens who wish to foster a deeper appreciation of the Constitution as a living document.

For further information, call R. S. Pollock, Chairman, Constitution Study Group, at (202)523-3183

*Certain 1985 and 1986 Constitution Study Group Program Schedules and Other Related Information can be found in Committee files.

FBI Records Retention Plan as
amended and accepted by U.S. District
Court Sept. 9, 1986

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN FRIENDS SERVICE COMMITTEE,
et al.,

Plaintiffs,

v.

WILLIAM H. WEBSTER, et al.,

Defendants.

Civil Action No. 79-1655

FILED

SEP 9 - 1986

JAMES F. DAVEY, Clerk

ORDER

In accordance with the Memorandum issued contemporaneously herewith, it is this 8th day of September, 1986

ORDERED that defendants' motion for modification be and it is hereby granted; and it is further

ORDERED that the amended Plan submitted by defendants on July 1, 1986 be and it is hereby accepted by the Court; and it is further

ORDERED that the injunction issued July 1, 1981 be and it is hereby vacated; and it is further

ORDERED that, except for the attorneys' fee issue, the action be and it is hereby dismissed.

HAROLD H. GREENE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN FRIENDS SERVICE COMMITTEE, et al.,

Plaintiffs,

v.

WILLIAM H. WEBSTER, et al.,

Defendants.

Civil Action No. 79-1655

FILED
SEP 9 - 1986
JAMES F. DAVEY, Clerk

MEMORANDUM

The Court has reviewed the parties' responses to the Court's June 10, 1986 order.

The defendants, who were ordered to file an amended plan containing changes specified in the Court's December 20, 1985 and June 10, 1986 orders have filed both an amended Plan and a motion for clarification or modification. In their motion, defendants note that, notwithstanding the amended plan's provision for retention of all case files in the "exceptional" category, some auxiliary office files may be destroyed under the plan prior to an archivist's determination that the case associated with that file is in fact "exceptional" and therefore deserving of retention. They urge the Court to modify its order to the extent of permitting the destruction of auxiliary office files, pursuant to other provisions in the plan, prior to the time an archivist reviews the associated case and determines whether it meets the criteria for "exceptional" case status. While the premature destruction of those auxiliary office files that will eventually be classified as "exceptional" is unfortunate, the Court is persuaded that it would be impractical to require retention of all auxiliary office files for the lengthy period of time needed to cull approximately 6.5 million cases awaiting review by the archivist. Accordingly, the modification sought by defendants will be granted. However, the defendants will at all times be expected to retain any auxiliary office file that has not been destroyed as of the date that the associated case is classified as "exceptional."

Plaintiffs have asked the Court to excise that portion of the plan permitting NARS and the FBI periodically to amend the plan on their own initiative. A document of this magnitude must be flexible enough to accomodate changing circumstances, and the Court therefore considers it proper that NARS and the FBI will adjust the plan from time to time. The Court, of course, expects that none of the changes will alter the basic thrust of the document as it has been developed pursuant to the Court's directions. However, plaintiffs' request to cast the current plan in concrete will be denied.

Except for the attorneys' fee question, this lengthy litigation is thus at an end. The Court cannot help but observe that the duration of this litigation and many of its complications have stemmed directly from the early recalcitrance of the defendants and their counsel. However, both the FBI and the Archivist have now agreed to and promulgated a reasonable plan which will permit researchers and others to attain access to those FBI records which may be of historical and other legitimate interest. The injunction prohibiting the destruction or other disposal of FBI documents will accordingly be dissolved.

An appropriate order accompanies this Memorandum.

Harold H. Greene

September 8, 1986

HAROLD H. GREENE
United States District Judge

THE RONALD REAGAN PRESIDENTIAL FOUNDATION

On February 27, 1985, The Ronald Reagan Presidential Foundation was created to fund the design, construction, endowment, and supervision of a Presidential Library and a Center for Public Affairs and to develop and maintain other activities related to the study of the Presidency and public affairs.

The Reagan Presidential Library will be the ninth library in the Presidential Library system. The practice, begun by President Franklin D. Roosevelt with the dedication of his library in 1940, preserves all documents of the President, provides public access to Presidential records in a single facility meeting the highest professional standards, and enhances research opportunities for scholars and students through the generosity of private philanthropy.

The Ronald Reagan Center for Public Affairs will encourage and facilitate the advanced study of public affairs in the United States, focusing on the major national and international policy issues this country will face in the years ahead. To support this program the Foundation seeks to build and operate the finest research center in the world.

1025 THOMAS JEFFERSON STREET, N.W.
SUITE 820
WASHINGTON, D.C. 20007
(202) 342-2850

THE RONALD REAGAN PRESIDENTIAL FOUNDATION HAS BEEN CLASSIFIED BY THE INTERNAL REVENUE SERVICE AS A SEC. 501(c)(3) NON-PROFIT TAX EXEMPT EDUCATIONAL INSTITUTION.

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Richard D. Wood

Gary L. Jones, Executive Director

*Executive Committee